

1 HAROLD J. MCELHINNY (CA SBN 66781)
 hmcclhinny@mofo.com
 2 MICHAEL A. JACOBS (CA SBN 111664)
 mjacobs@mofo.com
 3 JENNIFER LEE TAYLOR (CA SBN 161368)
 jtaylor@mofo.com
 4 ALISON M. TUCHER (CA SBN 171363)
 atucher@mofo.com
 5 RICHARD S.J. HUNG (CA SBN 197425)
 rhung@mofo.com
 6 JASON R. BARTLETT (CA SBN 214530)
 jasonbartlett@mofo.com
 7 MORRISON & FOERSTER LLP
 425 Market Street
 8 San Francisco, California 94105-2482
 Telephone: (415) 268-7000
 9 Facsimile: (415) 268-7522

WILLIAM F. LEE
 william.lee@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 60 State Street
 Boston, MA 02109
 Telephone: (617) 526-6000
 Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
 mark.selwyn@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 950 Page Mill Road
 Palo Alto, California 94304
 Telephone: (650) 858-6000
 Facsimile: (650) 858-6100

11 Attorneys for Plaintiff and
 12 Counterclaim-Defendant APPLE INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

16 APPLE INC.,

17 Plaintiff,

18 v.

19 SAMSUNG ELECTRONICS CO., LTD., a
 20 Korean business entity; SAMSUNG
 ELECTRONICS AMERICA, INC., a New York
 21 corporation; SAMSUNG
 TELECOMMUNICATIONS AMERICA, LLC, a
 22 Delaware limited liability company,

23 Defendants.

Case No. 11-cv-01846 LHK (PSG)

**APPLE INC.'S MOTION FOR
 LEAVE TO FILE SUPPLEMENTAL
 RESPONSE RE ARGUMENTS
 MADE AT JUNE 21 HEARING**

1 At oral argument, counsel for Samsung made several misstatements with respect to
2 Apple's production of transcripts after April 27. Apple therefore moves for leave to file a
3 supplemental response to correct the record.

4 Samsung asserts that Apple produced in May and June transcripts that should have been
5 produced earlier pursuant to the December 22 and April 12 Orders. In particular, Samsung
6 claimed at the hearing that Apple continued to produce transcripts subject to the Court's orders
7 from *Elan* matters well into June.

8 Apple produced no new transcripts from the *Elan* matters in May or June. Transcripts or
9 transcript excerpts that were *exhibits* to court documents from the *Elan* matter were produced.
10 Without exception, however, every one of them was (a) a duplicate of a transcript *already*
11 *produced* before April 27, or (b) a transcript whose production was not called for by the
12 December 22 and April 12 Orders because it involves a non-employee. (*See* Declaration of
13 Nathan B. Sabri in Support of Apple's Supp. Response ("Sabri Decl.") Ex. A.)

14 Apple also produced in May and June court documents from other proceedings, such as
15 the *Motorola* matters, that likewise contained transcripts and transcript excerpts that were court
16 documents. Apple has re-reviewed every transcript and transcript excerpt produced and
17 confirmed that it was (a) previously produced, (b) a non-Apple employee, or (c) from a case with
18 no technological nexus. (Sabri Decl. ¶ 2, Ex. A.)

19 Only three transcripts outside the foregoing categories were produced by Apple after April
20 27. These were transcripts prepared no earlier than April 9, 2012 (Nima Parivar); April 10, 2012
21 (William Stewart); and April 11, 2012 (Greg Novick), and were taken in the ongoing *Motorola*
22 litigation. (*Id.* ¶ 4.) Due to the proximity of these three depositions to the date of the April 12
23 Order, the transcripts were not in the set that counsel for Apple in *Motorola* provided for
24 production to Samsung immediately after the Order issued. (*Id.*) After Samsung's counsel in this
25 action, which also represents *Motorola* in that litigation, inquired about more recent transcripts,
26 we immediately contacted counsel for Apple in all of the related matters again to ask whether any
27 new deposition transcripts had come in. (*Id.*) The three transcripts discussed above were among
28 the transcripts provided in response, and Apple produced them promptly. (*Id.*) Apple notes

1 further that the transcripts are *not* “prior” testimony. (Dkt. No. 536 (December 22 Order) at 5
2 (relating to production of “Transcripts of **Prior** Deposition Testimony of Apple Witnesses”); Dkt.
3 No. 867 (April 12 Order) at 8 (“In relevant part, the court’s December 22 Order addressed
4 Samsung’s motion to compel ‘transcripts of **prior** deposition testimony of Apple witnesses
5 testifying in their employee capacity.’”)) (emphasis added.)

6 MORRISON & FOERSTER LLP

7 Dated: June 22, 2012

8 By: /s/ Michael A. Jacobs

9 Michael A. Jacobs

10 Attorneys for Plaintiff

11 APPLE INC.