

# **D'AMATO DECLARATION EX. Q**

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12 Counterclaim-Defendant APPLE INC.

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION  
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18  
19 APPLE INC., a California corporation,

20 Plaintiff,

21 v.

22 SAMSUNG ELECTRONICS CO., LTD., a  
Korean corporation; SAMSUNG ELECTRONICS  
23 AMERICA, INC., a New York corporation; and  
SAMSUNG TELECOMMUNICATIONS  
24 AMERICA, LLC, a Delaware limited liability  
company,

25 Defendants.  
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Case No. 11-cv-01846-LHK

**APPLE INC.'S SECOND  
AMENDED OBJECTIONS AND  
RESPONSE TO SAMSUNG  
ELECTRONICS CO. LTD.'S  
INTERROGATORY NO. 5 TO  
APPLE INC.**

1 Under Rules 26 and 33 of the Federal Rules of Civil Procedure and Local Rule 33, Apple  
2 Inc. (“Apple”) hereby amends its objections and response to Samsung Electronics Co. Ltd.’s  
3 Interrogatory No. 5 served by Samsung Electronics Co., Ltd. (“Samsung”) on August 3, 2011.

#### 4 **GENERAL OBJECTIONS**

5 The General Objections set forth in Apple’s Objections and Responses to Samsung’s First  
6 Set of Interrogatories, served on September 12, 2011, are incorporated herein by reference.

#### 7 **AMENDED OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 5**

8 Subject to the foregoing qualifications and General Objections and the specific objections  
9 made below, Apple objects and responds to Samsung Electronics Co. Ltd.’s Interrogatory No. 5  
10 to Apple Inc. as follows:

#### 11 **INTERROGATORY NO. 5:**

12 Separately for each of the APPLE PATENTS-IN-SUIT, APPLE TRADE DRESS and  
13 APPLE TRADEMARKS, IDENTIFY every product manufactured, used, sold, offered for sale, or  
14 imported into the United States since 2005 that YOU believe uses or may use any protected  
15 design, trademark, trade dress, or invention of the APPLE PATENTS-IN-SUIT, APPLE TRADE  
16 DRESS, and APPLE TRADEMARKS and the date(s) on which you believe that use occurred.  
17 The products shall be identified by product name, product manufacturer, telecommunications  
18 carrier (if applicable), date of product announcement, date of product release, and appearance of  
19 product – including front, back, and side images.

#### 20 **SECOND AMENDED OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 5:**

21 Apple objects to the phrase “appearance of product” as vague and ambiguous. Apple  
22 objects to this Interrogatory as overbroad, unduly burdensome, and not reasonably calculated to  
23 lead to the discovery of admissible evidence, especially to the extent it requests: (i) “every  
24 product,” including products not at issue in this litigation; (ii) the production of objects or images  
25 in response to an Interrogatory; (iii) information concerning the “appearance of product –  
26 including front, back, and side images”; and (iv) Samsung products released outside of the United  
27 States. Apple further objects to this Interrogatory to the extent it seeks information that: (i)  
28 requires the disclosure of information, documents, and things protected from disclosure by the

1 attorney-client privilege, work product doctrine, common interest doctrine, joint defense  
2 privilege, or any other applicable privilege, doctrine, or immunity; (ii) would require Apple to  
3 draw a legal conclusion to respond; (iii) is outside of Apple's possession, custody, or control; (iv)  
4 can be obtained as easily by Samsung, is already in Samsung's possession, or is publicly  
5 available; (v) concerns use of any asserted trademark or trade dress before 2007; (vi) would  
6 require Apple to draw a legal conclusion to respond; or (vii) is subject to a confidentiality or  
7 nondisclosure agreement or governed by a protective order preventing its production.

8 Subject to and incorporating its General Objections and its specific objections, Apple  
9 responds as follows with respect to the Samsung products accused in Apple's Amended  
10 Complaint:

11 At least the following Samsung devices use or may use inventions claimed by the '002,  
12 '891, '163, '915, and '828 patents: Acclaim, Captivate, Continuum, Droid Charge, Epic 4G,  
13 Exhibit 4G, Fascinate, Galaxy Ace, Galaxy Prevail, Galaxy S (i9000), Galaxy S 4G, Galaxy S 2  
14 (AT&T; i9100; T-Mobile; Epic 4G Touch; Skyrocket), Galaxy S Showcase (i500), Galaxy Tab  
15 7.0, Galaxy Tab 10.1, Gem, Gravity Smart, Indulge, Infuse 4G, Intercept, Mesmerize, Nexus S,  
16 Nexus S 4G, Replenish, Sidekick, Transform, and Vibrant.

17 At least the following Samsung devices use or may use inventions claimed by the '381  
18 patent: Captivate, Continuum, Droid Charge, Epic 4G, Exhibit 4G, Fascinate, Galaxy Ace,  
19 Galaxy Prevail, Galaxy S (i9000), Galaxy S 4G, Galaxy S 2 (Epic 4G Touch), Gravity Smart,  
20 Indulge, Infuse 4G, Intercept, Mesmerize, Nexus S, Nexus S 4G, Replenish, Sidekick, Vibrant,  
21 Galaxy Tab 7.0, and Galaxy Tab 10.1.

22 At least the following Samsung devices use or may use inventions claimed by the '607  
23 and '129 patents: Galaxy Tab 7.0 and Galaxy Tab 10.1.

24 At least the following Samsung devices use or may use the invention claimed by the  
25 D'889 patent: Galaxy Tab 10.1.

26 At least the following Samsung devices use or may use the inventions claimed by the  
27 D'087, D'677, and D'270 patents: Fascinate, Galaxy Ace, Galaxy S i9000, Galaxy S2 i9100,  
28

1 Galaxy S 4G, Infuse 4G, Mesmerize, Galaxy S Showcase (i500), Vibrant, Galaxy S2 Epic 4G  
2 Touch, Galaxy S2 (T-Mobile), Galaxy S2 (AT&T), and Galaxy S2 Skyrocket.

3 At least the following Samsung devices use or may use the inventions claimed by the  
4 D'790, D'305, and D'334 patents: Captivate, Continuum, Droid Charge, Epic 4G, Fascinate,  
5 Gem, Galaxy S i9000, Galaxy S 4G, Indulge, Infuse 4G, Mesmerize, Galaxy S Showcase (i500),  
6 and Vibrant.

7 At least the Samsung Vibrant, Mesmerize, Infuse 4G, Galaxy S 4G, Fascinate, Galaxy S2  
8 i9100, Galaxy S2 Epic 4G Touch, Galaxy S2 (AT&T), Galaxy S2 (T-Mobile), Galaxy S2  
9 Skyrocket, Captivate, Galaxy Ace, Galaxy S i9000, Droid Charge, Continuum, Epic 4G, Galaxy  
10 Prevail, and Galaxy S Showcase (i500) products use or may use a combination of elements from  
11 Apple's Original iPhone Trade Dress, iPhone 3G Trade Dress, iPhone 4 Trade Dress, iPhone  
12 Trade Dress; the trade dress shown in the Trade Dress Registrations; and the trade dress shown in  
13 U.S. Application Serial No. 85/299,118. Apple alleges that at least the Samsung Vibrant,  
14 Acclaim, Galaxy S Showcase (i500), Mesmerize, Infuse 4G, Indulge, Intercept, Galaxy S i9000,  
15 Galaxy S 4G, Galaxy Ace, Galaxy Prevail, Fascinate, Gem, Gravity Smart, Epic 4G, Exhibit 4G,  
16 Droid Charge, Continuum, Captivate, Galaxy S2 i9100, Galaxy S2 Epic 4G Touch, Galaxy S2  
17 (AT&T), Galaxy S2 (T-Mobile), Galaxy S2 Skyrocket, Galaxy S i9000, Galaxy Tab 7.0, Galaxy  
18 Tab 7.0 Plus, Galaxy Tab 10.1 products use or may use icons that infringe the Registered Icon  
19 Trademarks, the Purple iTunes Store Trademark, and the iTunes Eighth Note and CD Design  
20 Trademark. Apple alleges that at least the Galaxy Tab 10.1, Galaxy Tab 7.0, and Galaxy Tab 7.0  
21 Plus use or may use a combination of elements from the iPad Trade Dress and the iPad 2 Trade  
22 Dress; and the trade dress shown in U.S. Application Serial Nos. 77/921,838, 77/921,829, and  
23 77/921,869. Apple alleges that at least the Galaxy Tab 10.1, Galaxy Tab 7.0, and Galaxy Tab 7.0  
24 Plus use or may use icons that infringe the Registered Icon Trademarks, the Purple iTunes Store  
25 Trademark, and the iTunes Eighth Note and CD Design Trademark. Apple believes that the use  
26 or possible use of its patented inventions, trade dress, and trademarks occurred, for each product  
27 listed above, no later than the date of each product's release in the United States.  
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1 In accordance with Federal Rule of Civil Procedure 33(d), Apple refers to the following  
2 documents because the burden of deriving or ascertaining the answer to this Interrogatory from  
3 the produced business records is substantially the same for Apple as for Samsung: APLNDC-  
4 Y0000056159, APLNDC-X0000007220, APLNDC00013715, and APLNDC00013690. Apple  
5 also incorporates by reference its amended response to Interrogatory No. 6.

6 The foregoing response does not address recently-released Samsung products accused by  
7 Apple in the action styled *Apple Inc. v. Samsung Electronics Co. Ltd. et al.*, Case No. CV12-  
8 00630-LHK (N.D. Cal. Feb. 8, 2012). Apple, however, reserves the right to seek and enforce an  
9 injunction against any Samsung products that are no more than colorably different from the  
10 Samsung products found to infringe in this action and that infringe the Apple patents asserted in  
11 this action or, in the alternative, are confusingly similar to the trade dress and trademark rights  
12 asserted by Apple in this action.

13 Dated: March 8, 2012

MORRISON & FOERSTER LLP

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15 By: /s/ Richard S.J. Hung  
16 RICHARD S.J. HUNG

17 Attorneys for Plaintiff  
18 APPLE INC.  
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**CERTIFICATE OF SERVICE**

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is Morrison & Foerster LLP, 425 Market St., San Francisco, California 94105-2482.

I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on Thursday, March 8, 2012, I served a copy of:

**APPLE INC.'S SECOND AMENDED OBJECTIONS AND RESPONSE TO  
SAMSUNG ELECTRONICS CO. LTD.'S INTERROGATORY NO. 5 TO  
APPLE INC.**

- BY ELECTRONIC SERVICE [Fed. R. Civ. P. 5(b)] by electronically mailing a true and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Fed. R. Civ. P. 5(b).

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Executed in San Francisco, California this 8th day of March, 2012.

          
*/s/ Edith E. Perez*