

1 [COUNSEL LISTED ON SIGNATURE PAGES]

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., a California corporation,  
  
Plaintiff,  
  
v.  
  
SAMSUNG ELECTRONICS CO., LTD., a  
Korean corporation; SAMSUNG  
ELECTRONICS AMERICA, INC., a New  
York corporation; and SAMSUNG  
TELECOMMUNICATIONS AMERICA,  
LLC, a Delaware limited liability company,  
  
Defendants.

Case No. 11-cv-01846-LHK

**(UNDISPUTED) JOINT PROPOSED  
JURY INSTRUCTIONS**

Date: July 24, 2012  
Time: 1:30 pm  
Place: Courtroom 1, 5th Floor  
Judge: Hon. Lucy H. Koh

**PRELIMINARY INSTRUCTIONS**

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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 2  
WHAT IS EVIDENCE**

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

**Source**

Ninth Circuit Model Civil Jury Instructions - 1.6 (2007 Edition).

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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 3  
WHAT IS NOT EVIDENCE**

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

- (1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they will say in their opening statements, and what they will say in their closing arguments or at other times are all intended to help you interpret the evidence. But these arguments and statements are not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
- (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.
- (3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, sometimes testimony and exhibits are received only for a limited purpose; when I give a limiting instruction, you must follow it.
- (4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

**Source**

Ninth Circuit Model Civil Jury Instructions - 1.7 (2007 Edition).

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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 4  
EVIDENCE FOR LIMITED PURPOSE**

Some evidence may be admitted for a limited purpose only.

When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

**Source**

Ninth Circuit Model Civil Jury Instructions - 1.8 (2007 Edition).

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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 5  
DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

**Source**

Ninth Circuit Model Civil Jury Instructions - 1.9 (2007 Edition).





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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 7  
IMPEACHMENT EVIDENCE—WITNESS**

The evidence that a witness lied under oath or gave different testimony on a prior occasion may be considered, along with all other evidence, in deciding whether or not to believe the witness and how much weight to give to the testimony of the witness and for no other purpose.

**Source**

Ninth Circuit Model Civil Jury Instructions – 2.8 (2007 Edition).





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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 10  
STIPULATIONS OF FACT**

**[THE PARTIES AGREE THAT THIS INSTRUCTION SHOULD BE GIVEN WHEN THE  
FIRST STIPULATION OF FACT IS TO BE READ.]**

The parties have agreed to certain facts that will be read to you. You should therefore treat these facts as having been proved.

**Source**

Ninth Circuit Model Civil Jury Instructions - 2.2 (2007 Edition).

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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 11  
DEPOSITION IN LIEU OF LIVE TESTIMONY**

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

You should consider deposition testimony, presented to you in court in lieu of live testimony, insofar as possible, in the same way as if the witness had been present to testify.

**Source**

Ninth Circuit Model Civil Jury Instructions - 2.4 (2007 Edition).

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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 12  
USE OF INTERROGATORIES OF A PARTY**

**[THE PARTIES AGREE THAT THIS INSTRUCTION SHOULD BE GIVEN WHEN THE  
FIRST INTERROGATORY IS TO BE READ.]**

Evidence was presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath, before the actual trial, in response to questions that were submitted in writing under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

**Source**

Ninth Circuit Model Civil Jury Instructions - 2.10 (2007 Edition).

1                                   **PROPOSED PRELIMINARY JURY INSTRUCTION NO. 13**  
2                                   **EXPERT OPINION**

3       Some witnesses, because of education or experience, are permitted to state opinions and the  
4       reasons for those opinions.

5       Opinion testimony should be judged just like any other testimony. You may accept it or reject it,  
6       and give it as much weight as you think it deserves, considering the witness's education and  
7       experience, the reasons given for the opinion, and all the other evidence in the case.

8       **Source**

9       Ninth Circuit Model Civil Jury Instructions - 2.11 (2007 Edition).  
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**INSTRUCTIONS AT THE CLOSE OF EVIDENCE**

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**PROPOSED FINAL JURY INSTRUCTION NO. 14  
WHAT IS EVIDENCE**

The trial is now over. The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which are received into evidence; and
3. any facts to which the lawyers have agreed.

**Source**

Adapted from Ninth Circuit Model Civil Jury Instructions - 1.6 (2007 Edition).

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**PROPOSED FINAL JURY INSTRUCTION NO. 15**  
**WHAT IS NOT EVIDENCE**

In reaching your verdict, you may consider only the testimony and exhibits that were received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

- (1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they said in their opening statements and throughout the trial, and what they will say in their closing arguments or at other times are all intended to help you interpret the evidence. But these arguments and statements are not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.
- (2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.
- (3) Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition, sometimes testimony and exhibits are received only for a limited purpose; when I give a limiting instruction, you must follow it.
- (4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

**Source**

Adapted from Ninth Circuit Model Civil Jury Instructions - 1.7 (2007 Edition).

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**PROPOSED FINAL JURY INSTRUCTION NO. 16  
EVIDENCE FOR LIMITED PURPOSE**

Some evidence may have been admitted for a limited purpose only. You must consider it only for that limited purpose and for no other.

**Source**

Adapted from Ninth Circuit Model Civil Jury Instructions - 1.8 (2007 Edition).

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**PROPOSED FINAL JURY INSTRUCTION NO. 17  
DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

**Source**

Ninth Circuit Model Civil Jury Instructions - 1.9 (2007 Edition).

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**PROPOSED FINAL JURY INSTRUCTION NO. 18  
CREDIBILITY OF WITNESSES**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness said, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testified about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness’s memory;
- (3) the witness’s manner while testifying;
- (4) the witness’s interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness’s testimony;
- (6) the reasonableness of the witness’s testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

**Source**

Ninth Circuit Model Civil Jury Instructions - 1.11 (2007 Edition).

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**PROPOSED FINAL JURY INSTRUCTION NO. 19  
IMPEACHMENT EVIDENCE—WITNESS**

The evidence that a witness lied under oath or gave different testimony on a prior occasion may be considered, along with all other evidence, in deciding whether or not to believe the witness and how much weight to give to the testimony of the witness and for no other purpose.

**Source**

Ninth Circuit Model Civil Jury Instructions – 2.8 (2007 Edition).

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**PROPOSED FINAL JURY INSTRUCTION NO. 20  
TAKING NOTES**

You may have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

**Source**

Adapted from Ninth Circuit Model Civil Jury Instructions - 1.14 (2007 Edition).

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**PROPOSED FINAL JURY INSTRUCTION NO. 21  
DEPOSITION IN LIEU OF LIVE TESTIMONY**

You heard some witnesses testify by deposition. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

You should consider deposition testimony, presented to you in court in lieu of live testimony, insofar as possible, in the same way as if the witness had been present to testify.

**Source**

Adapted from Ninth Circuit Model Civil Jury Instructions - 2.4 (2007 Edition).



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**PROPOSED FINAL JURY INSTRUCTION NO. 22  
USE OF INTERROGATORIES OF A PARTY**

Evidence was presented to you in the form of answers of one of the parties to written interrogatories submitted by the other side. These answers were given in writing and under oath, before the actual trial, in response to questions that were submitted in writing under established court procedures. You should consider the answers, insofar as possible, in the same way as if they were made from the witness stand.

**Source**

Ninth Circuit Model Civil Jury Instructions - 2.10 (2007 Edition).

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**PROPOSED FINAL JURY INSTRUCTION NO. 23  
EXPERT OPINION**

Some witnesses, because of education or experience, were permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

**Source**

Ninth Circuit Model Civil Jury Instructions - 2.11 (2007 Edition).



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**PROPOSED FINAL JURY INSTRUCTION NO. 25  
COMMUNICATION WITH COURT**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the Bailiff, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

**Source**

Ninth Circuit Model Civil Jury Instructions - 3.2 (2007 Edition).

1 Dated: July 13, 2012

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21 By: Michael A. Jacobs  
Michael A. Jacobs

22 Attorneys for Plaintiff and  
23 Counterclaim-Defendant  
24 APPLE INC.  
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1 Dated: July 13, 2012

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15 By: Victoria Maroulis  
Victoria Maroulis

16 Attorneys for Defendants and  
17 Counterclaim-Plaintiffs  
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19 SAMSUNG ELECTRONICS AMERICA,  
20 INC. and SAMSUNG  
21 TELECOMMUNICATIONS AMERICA,  
22 LLC

