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 11 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC.

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 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 APPLE INC., a California corporation,
 18 Plaintiff,
 19 v.
 20 SAMSUNG ELECTRONICS CO., LTD., a
 Korean corporation; SAMSUNG
 21 ELECTRONICS AMERICA, INC., a New York
 corporation; and SAMSUNG
 22 TELECOMMUNICATIONS AMERICA, LLC, a
 Delaware limited liability company,
 23 Defendants.
 24

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

**APPLE'S PROPOSED DISPUTED
 JURY INSTRUCTIONS**

Judge: Hon. Lucy H. Koh
 Place: Courtroom 8, 4th Floor
 Trial: July 30, 2012 at 9 A.M.

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APPLE’S PROPOSED DISPUTED JURY INSTRUCTIONS

Samsung has suggested that, although not required by any Court order, the Court might benefit from having a full set of Samsung’s proposals for the disputed jury instructions standing alone. Apple does not object to that proposal. Apple thinks the Court might also benefit from having a full set of Apple’s disputed jury instructions standing alone. To that end, Apple respectfully submits below a complete set of Apple’s proposals for the parties’ jury instructions that remain in dispute.

Dated: July 16, 2012

MORRISON & FOERSTER LLP

By: /s/ Michael A. Jacobs
Michael A. Jacobs

Attorneys for Plaintiff APPLE INC.

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PRELIMINARY INSTRUCTIONS

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1 **PROPOSED PRELIMINARY JURY INSTRUCTION NO. 1**
2 **JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION**

3 **Apple's Proposed Instruction**

4 **[THIS INSTRUCTION SHOULD BE GIVEN WHEN THE FIRST FOREIGN SPEAKER**
5 **TESTIFIES.]**

6 Languages other than English may be used during this trial. One such language will be Korean.

7 The evidence to be considered by you is only that provided through the official court translators.
8 Although some of you may know Korean, it is important that all jurors consider the same
9 evidence. Therefore, you must accept the English translation. You must disregard any different
10 meaning.

11 **Source**

12 Ninth Circuit Model Civil Jury Instr. - 1.16 (2007 Ed.).

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**PROPOSED PRELIMINARY JURY INSTRUCTION NO. 2
USE OF INTERPRETERS IN COURT**

Apple's Proposed Instruction

[THIS INSTRUCTION SHOULD BE GIVEN WHEN THE FIRST FOREIGN SPEAKER TESTIFIES.]

You must not make any assumptions about a witness or a party based solely upon the use of an interpreter to assist that witness or party.

Source

Ninth Circuit Model Civil Jury Instr. - 1.17 (2007 Ed.).

1 **PROPOSED PRELIMINARY JURY INSTRUCTION NO. 5**
2 **WHAT PATENTS AND TRADE DRESS ARE AND HOW THEY ARE OBTAINED**

3 **Apple’s Proposed Instruction**

4 This case involves disputes relating to United States utility and design patents, and to trade dress.
5 Before summarizing the positions of the parties and the legal issues involved in the dispute, let
6 me explain what patents and trade dress rights are, and how they are obtained.

7 **I. Utility and Design Patents**

8 There are two types of patents in this case: utility patents and design patents. A “utility patent”
9 protects inventions. A utility patent may cover a process, machine, article of manufacture, or
10 composition of matter. A “design patent” protects the way an article of manufacture looks. It
11 covers the shape, configuration, and/or surface ornamentation of the article.

12 A valid patent gives its owner the right to prevent others from making, using, offering to sell,
13 selling, or importing the invention or patented design within the United States during the patent’s
14 term. A violation of this right is called “infringement.” The patent owner can enforce a patent
15 against infringers in federal court.

16 The content and structure of utility and design patents are different. A utility patent has what is
17 called a “specification.” The specification describes what the invention is, how it works, how to
18 make it, and how to use it. The specification concludes with a number of claims. The claims are
19 numbered sentences that define the boundaries of the patent’s protection and notify the public
20 about them.

21 A design patent also has a “specification.” For a design patent, the specification contains
22 drawings of the design and a description of the drawings. It also has a claim, but design patents
23 can only have one claim. The claim generally refers to the drawings and how they are described.
24 The claim defines the patent’s boundaries and notifies the public of those boundaries.

25 For both types of patents, a Patent Office Examiner reviews the application for the patent and
26 determines whether the claimed design or invention is patentable. The Examiner reviews what is
27 called “prior art” either that was in Patent Office records or that was submitted by the applicant.
28 I will give you instructions later on what constitutes prior art. In general, prior art includes
29 things that existed before the claimed invention, that were publicly known, that were used in a
30 publicly accessible way, or that were patented or described in a publication. The Examiner
31 considers whether each claim defines a design or an invention that is new and not obvious in
32 view of the prior art. A patent lists the prior art that the Examiner considered.

33 After the prior art search and examination of the application, the Examiner informs the applicant
34 what the Examiner has found and whether any claim is patentable. This writing from the
35 Examiner is called an “office action.” In the case of a utility patent application, if the Examiner
36 rejects the claims, the applicant may respond and/or change the claims or submit new claims. In
37 the case of a design patent application, if the Examiner rejects the claimed design, the applicant
38 may respond and/or change the drawings. In both cases, the applicant’s response may include
39 arguments about why the Examiner’s initial rejection should be reconsidered.

40 This “patent prosecution” process takes place only between the Examiner and the applicant. The
41 process may go back and forth for some time until the Examiner finds that the requirements for a
42 patent are met. The papers generated during this back and forth make up the “prosecution
43 history.” This material becomes available to the public at the time that the patent issues.

1 The fact that the Patent Office grants a patent does not necessarily mean that any invention or
2 design claimed in the patent deserves the protection of a patent. For example, the Patent Office
3 may not have had available to it all the information that will be presented to you. A company
4 accused of infringement has the right to argue in federal court that a claimed invention or design
5 is invalid because it does not meet the requirements for a patent.

6 **II. Trade Dress**

7 Trade dress is also at issue here. Trade dress is the physical detail and design of a product or its
8 packaging, which indicates the product's source and distinguishes it from the products of others.
9 Trade dress is the product's total image and overall appearance, and may include features such as
10 size, shape, color, color combinations, texture, or graphics. The shape of the old-fashioned
11 Coca-Cola bottle is an example of a trade dress.

12 The owner of a valid trade dress has the right to prevent others from "diluting" or "infringing" it.
13 "Dilution" refers to reducing the capacity of a famous trade dress to identify and distinguish
14 products or services. "Infringement" refers to another company's use of a trade dress similar to
15 the owner's trade dress that is likely to cause confusion in the marketplace.

16 A company acquires the right to exclude others from infringing or diluting its trade dress by
17 being the first to use it in the marketplace, or by using it before the alleged infringer or diluter.
18 Rights in a trade dress are obtained only through commercial use.

19 Once the owner of a trade dress has obtained the right to enforce it, the owner may obtain a
20 certificate of registration issued by the United States Patent and Trademark Office (which is
21 sometimes called the "Patent Office"). If the owner takes that step, when it later brings suit for
22 infringement or dilution, the owner may rely solely on the certificate to prove that the trade dress
23 is protectable. That said, an unregistered trade dress can also provide the owner with the
24 exclusive right to use that trade dress and to prevent others from diluting it.

25 **Source**

26 Adapted from Ninth Circuit Model Jury Instr. – 15.0, 15.2 (2007 Ed.); ABA 3.1.1; N.D. Cal.
27 Model Patent Jury Instr. A.1; The Intellectual Property Owners Ass'n Model Design Patent Jury
28 Instr. 1.1; adapted from instructions in *Nichia Corp. v. Seoul Semiconductor, Ltd.*, No. 3:06-CV-
0162-MMC (JCS), Dkt. No. 912, filed Nov. 8, 2007 (N.D. Cal.).

1 **PROPOSED PRELIMINARY JURY INSTRUCTION NO. 6**
2 **SUMMARY OF PATENT CONTENTIONS**

3 **Apple's Proposed Instruction**

4 I will now summarize for you each of the parties' patent infringement claims.

5 **Apple's Utility and Design Patent Claims**

6 Apple accuses Samsung of infringing a number of Apple's utility and design patents. Each
7 Apple patent was obtained by one or more named inventors and is owned by Apple.

8 The three Apple utility patents at issue in this case are:

- 9 • United States Patent Number 7,469,381. The parties and I will often refer to this patent
10 as the "'381," with '381 being the last three numbers of its patent number. This patent is
11 behind Tab __ in your notebooks.
- 12 • United States Patent Number 7,844,915. We may refer to this patent as the "'915
13 patent." It is behind Tab __ in your notebooks.
- 14 • United States Patent Number 7,864,163. We will often refer to this patent as the "'163
15 patent." It is at Tab __ in your notebooks.

16 The Samsung products that Apple accuses of infringing its utility patents are listed behind
17 Tab __ in the Juror Notebooks.

18 Apple also claims that Samsung has infringed four iPhone and iPad-related design patents. The
19 design patents are:

- 20 • United States Patent No. D604,305. This is the "D'305 patent," with D indicating that it
21 is a design patent and '305 being the last three numbers of its patent number. This patent
22 is behind Tab __ in your notebooks.
- 23 • United States Patents No. D504,889. This is the "D'889 patent." It is behind Tab __ in
24 your notebooks.
- 25 • United States Patent No. D593,087, or the "D'087 patent." This is at Tab __.
- 26 • United States Patent No. D618,677. This is the "D'677 patent" and it is behind Tab __.

27 The Samsung products that Apple accuses of infringing its design patents are listed behind
28 Tab __ in the Juror Notebooks.

Apple seeks money damages from Samsung for allegedly infringing certain claims of these
utility and design patents by making, importing, using, selling, and/or offering for sale the
smartphone and tablet products identified in your notebooks. Apple also argues that Samsung's
Korean parent SEC actively induced the U.S. Samsung entities (STA and SEA) to infringe.
Apple contends that Samsung's infringement has been willful.

Samsung denies that it has infringed Apple's design and utility patents and argues that the claims
asserted by Apple are invalid. Invalidity is a defense to infringement.

1 **Samsung’s Utility Patent Claims**

2 Samsung accuses Apple of infringing a number of Samsung’s utility patents. Each of Samsung’s
3 utility patents was obtained by one or more named inventors and transferred to Samsung.

4 The six Samsung utility patents at issue in this case are:

- 5 • United States Patent Number 6,928,604, or the “’604 patent.” This patent is behind
6 Tab __ in your notebooks.
- 7 • United States Patent Number 7,447,516, or the “’516 patent.” This is behind Tab __.
- 8 • United States Patent Number 7,456,893, or the “’893 patent.” This is behind Tab __.
- 9 • United States Patent Number 7,577,460, or the “’460 patent.” This is behind Tab __.
- 10 • United States Patent Number 7,675,941, or the “’941 patent.” This is behind Tab __.
- 11 • United States Patent Number 7,698,711, or the “’711 patent.” This is behind Tab __.

12 The Apple iPhone, iPad, and iPod Touch products that Samsung contends infringe various
13 claims of these patents are listed behind Tab __ in your Juror Notebooks.

14 Samsung seeks money damages from Apple for allegedly infringing these utility patents by
15 making, using, selling, offering for sale, and/or importing the products identified in your
16 notebooks. Samsung also alleges that Apple’s infringement has been willful.

17 Apple denies that it has infringed Samsung’s utility patents and argues that the claims asserted
18 by Samsung are invalid and, for the ’516, ’941, and ’604 patents, also unenforceable. Invalidity
19 and unenforceability are defenses to infringement.

20 * * *

21 For each party’s patent infringement claims against the other, the first issue you will be asked to
22 decide is whether the alleged infringer has infringed the claims of the patent holder’s patents.
23 There are a few different ways that a patent may be infringed. I will explain the requirements for
24 each of these types of infringement to you in detail at the conclusion of the case, including any
25 differences between utility patent infringement and design patent infringement.

26 The second issue you will need to decide to resolve each party’s patent infringement claims is
27 whether the patent holder’s patents are invalid. A patent claim may be invalid for a number of
28 reasons, including because it claims subject matter that is not new or that would have been
obvious at the time it was initially invented or designed.

If you decide that any claim of either patent holder’s patents has been infringed and is not
invalid, you will then need to decide the money damages that must be awarded to the patent
holder. For each party’s patent infringement allegations, you will also need to make a finding as
to whether any infringement was willful. If you decide that any infringement was willful, that
decision should not affect any damage award you give. I will take willfulness into account later.

I will give you more detailed instructions on all of these issues at the end of the case.

1 **Source**

2 Adapted from N.D. Cal. Model Patent Jury Instr. A.3; The Intellectual Property Owners Ass'n
3 Model Design Patent Jury Instr. 4.

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1 Because the evidence is introduced piecemeal, you need to keep an open mind as the evidence
2 comes in and wait for all the evidence before you make any decisions. In other words, you
should keep an open mind throughout the entire trial.

3 After the evidence has been presented, the attorneys will make closing arguments and I will give
4 you final instructions on the law that applies to the case.

Source

5 Adapted from N.D. Cal. Model Patent Jury Instr. A.5.
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1 **Source**

2 Adapted from N.D. Cal. Model Patent Jury Instr. B.2.1; The Intellectual Property Owners Ass'n
3 Model Design Patent Jury Instr. 5.

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INSTRUCTIONS AT THE CLOSE OF EVIDENCE

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GENERAL CIVIL INSTRUCTIONS

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**PROPOSED FINAL JURY INSTRUCTION NO. 12
BURDENS OF PROOF--GENERALLY**

Apple's Proposed Instruction

The law recognizes three kinds of burdens of proof:

- (1) When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true;
- (2) When a party has the burden of proving any claim or defense by clear and convincing evidence, it means you must be persuaded by the evidence that the claim or defense is highly probable. This is a higher standard of proof than proof by a preponderance of the evidence; and
- (3) The third kind of burden of proof is referred to as “beyond a reasonable doubt.” But this burden of proof is involved in criminal cases and is not required in this case.

Source

Adapted from Ninth Circuit Model Civil Jury Instr. - 1.3, 1.4 (2007 Ed.).

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PROPOSED FINAL JURY INSTRUCTION NO. 15
RETURN OF VERDICT

Apple's Proposed Instruction

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the court that you are ready to return to the courtroom.

Source

Ninth Circuit Model Civil Jury Instr. - 3.3 (2007 Ed.).

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Source

Adapted from N.D. Cal. Model Patent Jury Instr. B.1; The Intellectual Property Owners Ass'n Model Design Patent Jury Instr. 6.

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UTILITY PATENT JURY INSTRUCTIONS

1 **PROPOSED FINAL JURY INSTRUCTION NO. 22**
2 **UTILITY PATENTS— LIMITATIONS ON THE DOCTRINE OF EQUIVALENTS³**

3 **Apple’s Proposed Instruction**

4 Because Samsung made certain claim changes or statements during patent prosecution, the
5 doctrine of equivalents analysis cannot be applied to the following requirements of the asserted
6 claims:

- 6 • The limitation requiring “wherein the music background play object includes an
7 application module including at least one applet” in claim 9 of the ’711 patent.
- 8 • The limitations requiring a “first E-mail transmission sub-mode,” a “second E-mail
9 transmission sub-mode,” “displaying an image most recently captured in a camera
10 mode,” “sequentially displaying other images stored in a memory through the use of
11 scroll keys” in claim 1 of the ’460 patent.
- The limitation requiring “irrespective of a duration” in claim 10 of the ’893 patent.

12 Unless each of these requirements is literally present within Apple’s accused products or
13 methods, there can be no infringement of these claims.

14 **Source**

15 N.D. Cal. Model Patent Jury Instr. B.3.7.

16 **Authorities**

17 *Honeywell Int’l Inc. v. Hamilton Sundstrand Corp.*, 370 F.3d 1131 (Fed. Cir. 2004) (*en banc*);
18 *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 344 F.3d 1359 (Fed. Cir. 2003) (*en*
19 *banc*).

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27 ³ Apple does not believe that Samsung should be permitted to rely on the doctrine of
28 equivalents with respect to any of its infringement contentions. Apple reserves its right to
withdraw or modify this instruction if the Court rules in its favor on this issue.

- '915 patent: January 7, 2007.
- '163 patent: September 6, 2006.

In deciding whether a reference qualifies as prior art, you may have to determine the date of conception of the claimed invention, and of any alleged prior invention(s) relied on by the accused infringer. Conception is defined as the mental part of an inventive act. It is proven when the invention is shown in its complete form by drawings, disclosure to another, or other forms of evidence presented at trial.

Source

Adapted from N.D. Cal. Model Patent Jury Instr. B.4.3a1, B.4.3a2.

Authorities

35 U.S.C. § 102; *Flex-Rest, LLC v. Steelcase, Inc.*, 455 F.3d 1351, 1358-60 (Fed. Cir. 2006); *Invitrogen Corp. v. Biocrest Mfg., L.P.*, 424 F.3d 1374, 1379-82 (Fed. Cir. 2005); *In re Klopfenstein*, 380 F.3d 1345, 1348-51 (Fed. Cir. 2004); *Toro Co. v. Deere & Co.*, 355 F.3d 1313, 1320-21 (Fed. Cir. 2004); *Schering Corp. v. Geneva Pharms., Inc.*, 339 F.3d 1373, 1377-80 (Fed. Cir. 2003); *Apotex U.S.A., Inc. v. Merck & Co.*, 254 F.3d 1031, 1035 (Fed. Cir. 2001); *Mycogen Plant Sci., Inc. v. Monsanto Co.*, 243 F.3d 1316, 1330-31 (Fed. Cir. 2001); *Ecolochem, Inc. v. S. Cal. Edison Co.*, 227 F.3d 1361, 1367-70 (Fed. Cir. 2000); *Singh v. Brake*, 222 F.3d 1362, 1366-70 (Fed. Cir. 2000); *Pannu v. Iolab Corp.*, 155 F.3d 1344, 1349 (Fed. Cir. 1998); *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1576-78 (Fed. Cir. 1997); *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 78 F.3d 540, 545 (Fed. Cir. 1996); *In re Bartfeld*, 925 F.2d 1450, 1452-53 (Fed. Cir. 1991); *Ralston Purina Co. v. Far-Mar-Co, Inc.*, 772 F.2d 1570, 1574 (Fed. Cir. 1985); *Am. Stock Exch., LLC v. Mopex, Inc.*, 250 F. Supp. 2d 323, 328-32 (S.D.N.Y. 2003); *In re Wyer*, 655 F.2d 221, 226 (C.C.P.A. 1981); *Pfaff v. Wells Elecs. Inc.*, 525 U.S. 55 (1998); *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 1346 (Fed. Cir. 2000); *Abbott Labs. v. Geneva Pharms., Inc.*, 182 F.3d 1315, 1318 (Fed. Cir. 1999); *Finnigan Corp. v. ITC*, 180 F.3d 1354, 1365 (Fed. Cir. 1999); *J.A. LaPorte, Inc. v. Norfolk Dredging Co.*, 787 F.2d 1577, 1581 (Fed. Cir. 1986); *In re Hall*, 781 F.2d 897, 898-99 (Fed. Cir. 1986); *D.L. Auld Co. v. Chroma Graphics Corp.*, 714 F.2d 1144, 1147-50 (Fed. Cir. 1983).

1 A patent claim with several elements is not obvious merely because each element was
2 independently known in the prior art. In evaluating obviousness, you may consider whether
3 there was a reason for one of ordinary skill in the field to combine prior art elements in the same
4 way the claimed invention combines them. There is no one way to draw the line between true
5 inventiveness, and the application of common sense and ordinary skill.

6 For example, market forces or other incentives may be what produced a change, rather than true
7 inventiveness. You may consider whether the change was the predictable result of using prior art
8 elements according to their known functions, or whether it resulted from true inventiveness. You
9 may also consider whether there was a suggestion in the prior art to make the combination of
10 elements claimed in the patent, and whether the claim applies a known technique that had been
11 used with a similar device. You may also consider whether the claimed invention would have
12 been obvious to try, meaning that the claimed innovation was one of a small number of possible
13 approaches to the problem with a reasonable expectation of success.

14 However, you must always be careful not to determine obviousness using the benefit of
15 hindsight. Many true inventions might seem obvious after the fact. You should put yourself in
16 the position of a person of ordinary skill in the field at the time the claimed invention was made
17 and should not consider what is known today or what is learned from the teaching of the patent.

18 **Source**

19 Adapted from N.D. Cal. Model Patent Jury Instr. B.4.3b; Federal Circuit Bar Association Model
20 Patent Jury Instr. 4.3c.

21 **Authorities**

22 35 U.S.C. § 103; *Graham v. John Deere Co.*, 383 U.S. 1 (1966); *KSR Int'l Co. v. Teleflex, Inc.*,
23 550 U.S. 398, 407 (2007); *Ruiz v. A.B. Chance Co.*, 234 F.3d 654 (Fed. Cir. 2000); *Arkie Lures,*
24 *Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957 (Fed. Cir. 1997); *Specialty Composites v.*
25 *Cabot Corp.*, 845 F.2d 981, 991 (Fed. Cir. 1988); *Windsurfing Int'l, Inc. v. AMF, Inc.*, 782 F.2d
26 995, 1000 (Fed. Cir. 1986); *Pentec, Inc. v. Graphic Controls Corp.*, 776 F.2d 309, 313 (Fed. Cir.
27 1985). *See Novo Nordisk A/S v. Becton Dickinson & Co.*, 304 F.3d 1216, 1219-20 (Fed. Cir.
28 2002); *Wang Labs, Inc. v. Toshiba Corp.*, 993 F.2d 858, 864 (Fed. Cir. 1993); *Daiichi Sankyo*
Co. v. Apotex, Inc., 501 F.3d 1254, 1256 (Fed. Cir. 2007); *Brown & Williamson Tobacco*
Corp. v. Philip Morris Inc., 229 F.3d 1120, 1125 (Fed. Cir. 2000); *SIBIA Neurosciences, Inc. v.*
Cadus Pharm. Corp., 225 F.3d 1349, 1355 (Fed. Cir. 2000); *Ryko Mfg. Co. v. Nu-Star, Inc.*,
950 F.2d 714, 718-19 (Fed. Cir. 1991).

1 **PROPOSED FINAL JURY INSTRUCTION NO. 34**
2 **UTILITY PATENT DAMAGES—LOST PROFITS—AMOUNT OF PROFIT**

3 **Apple’s Proposed Instruction**

4 Apple may calculate its lost profits on lost sales by computing the lost revenue for sales it claims
5 it would have made but for the infringement, and subtracting from that figure the amount of
6 additional costs or expenses it would have incurred in making those lost sales (such as cost of
7 goods, sales costs, packaging costs, and shipping costs). Certain fixed costs that do not vary with
8 increases in production or scale, such as taxes, insurance, rent, and administrative overhead,
9 should not be subtracted from Apple’s lost revenue.

10 **Source**

11 Adapted from Federal Circuit Bar Association Model Patent Jury Instr. B.6.2.

12 **Authorities**

13 *Paper Converting Mach. Co. v. Magna-Graphics Corp.*, 745 F.2d 11 (Fed. Cir. 1984).

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Authorities

35 U.S.C. § 284; *Crystal Semiconductor Corp. v. Tritech Microelectronics Int’l, Inc.*, 246 F.3d 1336 (Fed. Cir. 2001); *Fromson v. Western Litho Plate & Supply Co.*, 853 F.2d 1568, 1574 (Fed. Cir. 1998) (overruled on other grounds); *Minco, Inc. v. Combustion Eng’g, Inc.*, 95 F.3d 1109, 1119-20 (Fed. Cir. 1996); *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1579 (Fed. Cir. 1996); *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1554 (Fed. Cir. 1995) (en banc); *Golight, Inc., v. Wal-Mart Stores, Inc.*, 355 F.3d 1327, 1338 (Fed. Cir. 2004); *Maxwell v. J. Baker, Inc.*, 86 F.3d 1098, 1108-10 (Fed. Cir. 1996); *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970).

1 No one factor is dispositive, and you should consider the evidence that has been presented to you
2 in this case on each one of the factors. You may also consider any other factors which in your
3 mind would have increased or decreased the royalty the infringer would have been willing to pay
4 and the patent holder would have been willing to accept, acting as normally prudent business
5 people. The final factor establishes the framework which you should use in determining a
6 reasonable royalty, that is, the payment that would have resulted from a negotiation between the
7 patent holder and the infringer taking place at a time when infringement began.

8 **Source**

9 Adapted from N.D. Cal. Model Patent Jury Instr. B.5.6, B.5.7; Adapted from Federal Circuit Bar
10 Association Model Patent Jury Instr. B.6.7.

11 **Authorities**

12 *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292 (Fed. Cir. 2011) (“25% rule of thumb”
13 inadmissible); *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860 (Fed. Cir. 2010) (per curiam)
14 (licenses must be related to patent at issue to be relevant to a reasonable royalty); *Lucent Techs.,*
15 *Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1340 (Fed. Cir. 2009), cert. denied, 130 S. Ct. 3324 (2010)
16 (vacating and rewarding jury award as excessive); *Golight, Inc. v. Wal-Mart Stores, Inc.*,
17 355 F.3d 1327, 1338 (Fed. Cir. 2004); *Maxwell v. J. Baker, Inc.*, 86 F.3d 1098, 1108-10 (Fed. Cir.
18 1996); *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1579-81 (Fed. Cir. 1996); *Rite-Hite Corp. v.*
19 *Kelley Co.*, 56 F.3d 1538, 1554 (Fed. Cir. 1995) (en banc); *Georgia-Pacific Corp. v. U.S.*
20 *Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970); 35 U.S.C. § 284; *Crystal*
21 *Semiconductor Corp. v. Tritech Microelectronics Int’l, Inc.*, 246 F.3d 1336 (Fed. Cir. 2001);
22 *Fromson v. W. Litho Plate & Supply Co.*, 853 F.2d 1568, 1574 (Fed. Cir. 1998); *Minco, Inc. v.*
23 *Combustion Eng’g, Inc.*, 95 F.3d 1109, 1119-20 (Fed. Cir. 1996); United States Court of Appeals
24 Fifth Judicial Circuit Pattern Jury Instructions, Instructions 9.8 (1999); *Interactive Pictures*
25 *Corp. v. Infinite Pictures, Inc.*, 274 F.3d 1371 (Fed. Cir. 2001); *Trans-World Mfg. Corp. v. Al*
26 *Nyman & Sons, Inc.*, 750 F.2d 1552 (Fed. Cir. 1984).

1 give rise to actual notice); *Funai Elec. Co., Ltd. v. Daewoo Elec. Corp.*, 616 F.3d 1357, 1373
2 (Fed. Cir. 2010) (communication giving rise to actual notice does not need to identify all related
3 products since “ensuing discovery . . . may bring those products within the scope of the notice”).
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DESIGN PATENT JURY INSTRUCTIONS

1 *Walgreens Corp.*, 589 F.3d 1233, 1239-40 (Fed. Cir. 2009)); *id.* (“In the infringement analysis,
2 the focus should be on “the overall design” of the patent. For the anticipation and obviousness
3 analysis, the focus should likewise be on “the overall design” of the patent as compared to the
4 prior art.”) (citing *Int’l Seaway Trading Corp. v. Walgreens Corp.*, 589 F.3d 1233, 1239-
5 40 (Fed. Cir. 2009)); *Crocs, Inc. v. ITC*, 598 F.3d 1294, 1304 (Fed. Cir. 2010) (“The proper
6 comparison requires a side-by-side view of the drawings of the [asserted] design and the accused
7 products.”); *L.A. Gear, Inc. v. Thom McAn Shoe Co.*, 988 F.2d 1117, 1126 (Fed. Cir. 1993)
8 (“Design patent infringement *relates solely to the patented design, and does not require proof of*
9 *unfair competition in the marketplace . . .*”) (emphasis added); *Braun, Inc. v. Dynamics Corp.*,
10 975 F.2d 815, 821 (Fed. Cir. 1992) (“[n]othing in *Gorham* suggests that, in finding design patent
11 infringement, a trier of fact may not as a matter of law rely *exclusively or primarily on a visual*
12 *comparison* of the patented design, as well as the device that embodies the design, and the
13 accused device’s design.”) (emphases added); *Sun Hill Indus., Inc. v. Easter Unlimited, Inc.*,
14 48 F.3d 1193, 1196 (Fed. Cir. 1995) (holding that the trial court recognized that “the patent never
15 mentions color or size or material,” “the court erroneously relied on these unclaimed features of
16 Sun Hill’s GIANT STUFF-A-PUMPKIN in finding infringement”) (citation omitted).
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1 **Source**

2 Adapted from N.D. Cal. Model Patent Jury Instr. B.4.3a1, B.4.3a2; The Intellectual Property
3 Owners Ass’n Model Design Patent Jury Instr. 9.3, 9.4.

4 **Authorities**

5 35 U.S.C. § 102; *Apple Inc. v. Samsung Electronics Co., Ltd.*, No. 11-CV-01846-LHK (Dkt.
6 No. 452) (N.D. Cal. Dec. 2, 2011) at 11 (the “ordinary observer” test applies to anticipation)
7 (citing *Int’l Seaway Trading Corp. v. Walgreens Corp.*, 589 F.3d 1233, 1239-40 (Fed. Cir.
8 2009)); *id.* at 18 (“The test for anticipation is the same as the test for infringement, the only
9 difference being that the court compares the patented design with the alleged anticipatory
10 reference rather than with the accused infringing product.”); *id.* at 10-11 (“Under the ordinary
11 observer test, an accused device infringes upon a design patent if “in the eye of an ordinary
12 observer, giving such attention as a purchaser usually gives,” “the design of the accused device
13 and the patented design are “substantially the same.” The designs are “substantially the same,
14 if the resemblance [between the accused device’s design and the patented design] is such as to
15 deceive [an ordinary observer], inducing him to purchase one supposing it to be the other.””) (citing
16 *Egyptian Goddess, Inc. v. Swisa, Unc.*, 543 F.3d 665, 670 (Fed. Cir. 2008) (quoting
17 *Gorham Co. v. White*, 81 U.S. 511, 528 (1871)); *id.* at 11 (“For the anticipation and obviousness
18 analysis, the focus should likewise be on ‘the overall design’ of the patent as compared to the
19 prior art.”) (citing *Int’l Seaway Trading Corp. v. Walgreens Corp.*, 589 F.3d 1233, 1239-40 (Fed.
20 Cir. 2009)).
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1 appearance as the claimed design in the eyes of an ordinary observer, you should consider any of
2 the following factors that you find have been shown by the evidence. These factors may indicate
that the claimed design would not have been obvious at the time it was made:

- 3 (1) commercial success of products covered by the claimed design due to the
4 appearance of the claimed design;
- 5 (2) copying of the claimed design by others;
- 6 (3) acceptance by others of the claimed design as shown by praise from others in the
field; and
- 7 (4) whether others expressed surprise or disbelief regarding the claimed design.

8 Although you should consider any evidence of these factors, the relevance and importance of any
9 of them to your decision on obviousness or non-obviousness is up to you.

10 In deciding whether the claimed design was obvious, please keep in mind that a design with
11 several features is not obvious merely because each individual feature was present in prior art
12 designs. You must always be careful not to determine obviousness using the benefit of
13 hindsight. Many truly novel and non-obvious designs might seem obvious after the fact. You
14 should put yourself in the position of a person of ordinary skill in the field at the time the
15 claimed design was made and should not consider what is known today or what is learned from
16 the teaching of the patent.

17 **Source**

18 Adapted from N.D. Cal. Model Patent Jury Instr. B.4.3b; The Intellectual Property Owners Ass'n
19 Model Design Patent Jury Instr. 9.7- 9.10; Federal Circuit Bar Association Model Patent Jury
Instr. 4.3c.

20 **Authorities**

21 35 U.S.C. § 103; *Apple Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1329, 1332 (Fed. Cir. 2012)
22 (obviousness analysis requires “a two step process” and must focus on visual appearance, not the
23 “general concept” of a design); *Durling v. Spectrum Furniture Co., Inc.*, 101 F.3d 100, 103 (Fed.
24 Cir. 1996) (“[T]he ultimate inquiry . . . is whether the claimed design would have been obvious
25 to a designer of ordinary skill who designs articles of the type involved.”); *id.* at 103, quoting *In*
26 *re Rosen*, 673 F.2d 388, 391 (C.C.P.A. 1982) (“[O]ne must find a single reference, ‘a something
27 in existence, the design characteristics of which are basically the same as the claimed design.’”);
28 *id.*, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996) (“[S]econdary references may
only be used to modify the primary reference if they are ‘so related to the primary reference that
the appearance of certain ornamental features in one would suggest the application of those
features to the other.’”); *see also Apple Inc.*, 678 F.3d at 1329-1332 (applying quoted language
from *Durling*, *In re Rosen*, and *In re Borden*).

1 (Fed. Cir. 2010) (communication giving rise to actual notice does not need to identify all related
2 products since “ensuing discovery . . . may bring those products within the scope of the notice”).

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INDUCEMENT AND WILLFULNESS JURY INSTRUCTIONS

1 2. Apple took deliberate actions to avoid learning of that fact.

2 **Sources**

3 Adapted from N.D. Cal. Model Patent Jury Instr. B.3.9; adapted from instructions in *Oracle*
4 *America, Inc. v. Google Inc.*, Case No. 3:10-cv-03561-WHA, Dkt. No. 1121, filed May 11, 2012
 (N.D. Cal.).

5 **Authorities**

6 35 U.S.C. § 271(b); *Global-Tech Appliances, Inc., v. SEB S.A.*, 131 S. Ct. 2060, 2069 (2011)
7 (“Given the long history of willful blindness and its wide acceptance in the Federal Judiciary, we
8 can see no reason why the doctrine should not apply in civil lawsuits for induced patent
9 infringement under 35 U.S.C. § 271(b).”); *ePlus, Inc. v. Lawson Software, Inc.*, No. 3:09cv620,
10 2011 WL 3584313, at *5 (E.D. Va. Aug. 12, 2011) (“Knowledge of the patent may be
11 established by a finding that [the alleged infringer] had actual knowledge of the patent or that
12 [the alleged infringer] deliberately disregarded a known risk that ePlus had a protective patent.”);
13 *DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304-1306 (Fed. Cir. 2006) (*en banc*); *Broadcom*
14 *Corp. v. Qualcomm, Inc.*, 543 F.3d 683 (Fed. Cir. 2008).

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1 In this context, to show that the alleged infringer willfully blinded itself about whether its actions
2 infringed a valid patent, the patent-holder must show that the alleged infringer subjectively
3 believed that there was a high probability it was infringing and took deliberate actions to avoid
learning if that was the case.

4 **Source**

5 Adapted from N.D. Cal. Model Patent Jury Instr. B.3.10.

6 **Authorities**

7 35 U.S.C. § 284; *In re Seagate Tech., LLC* (“Seagate”), 497 F.3d 1360, 1371 (Fed. Cir. 2007) (en
8 banc) (standard for willful infringement); *Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v.*
9 *Dana Corp.*, 383 F.3d 1337, 1345 (Fed. Cir. 2004) (en banc); *Crystal Semiconductor Corp. v.*
10 *Tritech Microelectronics Int’l, Inc.*, 246 F.3d 1336, 1346 (Fed. Cir. 2001); *WMS Gaming Inc. v.*
11 *Int’l Game Tech.*, 184 F.3d 1339, 1354 (Fed. Cir. 1999); *Gustafson, Inc. v. Intersystems Indus.*
12 *Prods., Inc.*, 897 F.2d 508, 510 (Fed. Cir. 1990); *Read Corp. v. Portec, Inc.*, 970 F.2d 816, 826-
13 827 (Fed. Cir. 1992); *C.R. Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs.*, No. 2010-
14 1510, 2012 U.S. App. LEXIS 13561, at *6-7 (Fed. Cir. June 14, 2012) (the *Seagate* subjective
15 prong is an issue of fact); *Global-Tech Appliances, Inc., v. SEB S.A.*, 131 S. Ct. 2060, 2069
16 (2011) (“Given the long history of willful blindness and its wide acceptance in the Federal
17 Judiciary, we can see no reason why the doctrine should not apply in civil lawsuits for induced
18 patent infringement under 35 U.S.C. § 271(b).”); *ePlus, Inc. v. Lawson Software, Inc.*,
19 No. 3:09cv620, 2011 WL 3584313, at *5 (E.D. Va. Aug. 12, 2011) (“Knowledge of the patent
20 may be established by a finding that [the alleged infringer] had actual knowledge of the patent or
21 that [the alleged infringer] deliberately disregarded a known risk that ePlus had a protective
22 patent.”); *Itar-Tass Russian News Agency v. Russian Kurier*, No. 95-Civ-2144 (JGK), 1997 U.S.
23 Dist. LEXIS 8297, at *3-4 (S.D.N.Y. June 10, 1997) (copyright infringement was blatant and
24 willful when defendant continued to publish articles not covered by a preliminary injunction);
25 *SEB, S.A. v. Montgomery Ward & Co.*, 412 F. Supp. 2d 336, 337, 344 (S.D.N.Y. 2006) (a
26 reasonable jury could consider the fact that a defendant continued to sell a redesigned product
27 after a preliminary injunction finding infringement for purposes of determining intent and
28 induced infringement under § 271(b)); *Cordis Corp. v. Boston Sci. Corp.*, No. 03-27-SLR, 2010
U.S. Dist. LEXIS 7197, at *7-8 (D. Del. Jan. 28, 2010) (jury given summary of preliminary
injunction for purposes of willfulness under *Seagate*).

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TRADE DRESS JURY INSTRUCTIONS

1 functional elements that are separately unprotectable can be protected together as part of a trade
2 dress.”) (citing *Adidas-Solomon AG v. Target Corp.*, 228 F. Supp. 2d 1192, 1195 (D. Or. 2002)
3 (citing *Clicks Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1259 (9th Cir. 2001))); *Disc Golf*
4 *Ass’n v. Champion Discs, Inc.*, 158 F.3d 1002, 1006-09 (9th Cir. 1998) (“To determine whether a
5 product feature is functional, we consider several factors: (1) whether the design yields a
6 utilitarian advantage, (2) whether alternative designs are available, (3) whether advertising touts
7 the utilitarian advantages of the design, and (4) whether the particular design results from a
8 comparatively simple or inexpensive method of manufacture. No one factor is dispositive.”);
9 *Fuddruckers, Inc. v. Doc’s B.R. Others, Inc.*, 826 F.2d 837, 842-43 (9th Cir. 1987) (“We examine
10 trade dress as a whole to determine its functionality; functional elements that are separately
11 unprotectable can be protected together as part of a trade dress. In other words, our inquiry is not
12 addressed to whether individual elements of the trade dress fall within the definition of functional,
13 but to whether the whole collection of elements taken together are functional.”); *see also Traffix*
14 *Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 32 (2001).

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When considering this factor, please keep in mind that the application of discrimination and scrutiny by a consumer to financial terms such as data plans does not necessarily equate to discrimination and scrutiny regarding product appearance.

Source

Ninth Circuit Model Civil Jury Instr. - 15.16 (2007 Ed.).

Authorities

AMF Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979) (setting out likelihood of confusion factors); *see also Fortune Dynamic, Inc. v. Victoria’s Secret Stores Brand Mgmt.*, 618 F.3d 1025, 1030-31 (9th Cir. 2010) (applying *Sleekcraft* test); *Metro Pub. v San Jose Mercury News*, 987 F.2d 637, 640 (9th Cir. 1993) (“Because each factor is not necessarily relevant to every case, this list [of likelihood of confusion factors] functions as a guide and is ‘neither exhaustive nor exclusive.’”); *Fortune Dynamic, Inc. v. Victoria’s Secret Stores Brand Mgmt., Inc.*, 618 F.3d 1025, 1032 (9th Cir. 2010); *Academy of Motion Picture Arts & Sciences v. Creative House Promotions, Inc.* 944 F.2d 1446, 1455 (9th Cir. 1991).

1 **PROPOSED FINAL JURY INSTRUCTION NO. 74**
2 **TRADE DRESS DAMAGES IN GENERAL**

3 **Apple's Proposed Instruction**

4 I will now explain to you how to assess the monetary relief to which Apple is entitled based on its
5 claims for trade dress dilution and infringement. As I will explain, there are three forms of
6 monetary relief to which Apple may be entitled.

7 Subject to any exceptions I mention, Apple has the burden to persuade you of the amount of
8 monetary relief to which it is entitled.

9 In determining the amount of money to award Apple for its trade dress claims, you must
10 determine the date on which damages began to accrue. Damages for trade dress dilution and
11 trade dress infringement begin to accrue on the date that a violation first occurred. You should
12 award Apple money damages for all violations that occurred on that date and any date after that.

13 **Authorities**

14 15 U.S.C. § 1111 (“Notwithstanding the provisions of section 1072 hereof [15 USC 1072], a
15 registrant of a mark registered in the Patent and Trademark Office, may give notice that his mark
16 is registered by displaying with the mark the words “Registered in U. S. Patent and Trademark
17 Office” or “Reg. U.S. Pat. & Tm. Off.” or the letter R enclosed within a circle, thus (R); and in
18 any suit for infringement under this Chapter by such a registrant failing to give such notice of
19 registration, no profits and no damages shall be recovered under the provisions of this Chapter
20 unless the defendant had actual notice of the registration.”); 15 U.S.C. § 1117(a) (“When a
21 violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a
22 violation under section 1125(a) or (d) of this title, or a willful violation under section 1125(c) of
23 this title, shall have been established in any civil action arising under this chapter, the plaintiff
24 shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to
25 the principles of equity, to recover (1) defendant’s profits, (2) any damages sustained by the
26 plaintiff, and (3) the costs of the action.”); *Coach, Inc. v. Asia Pac. Trading Co., Inc.*, 676 F.
27 Supp. 2d 914, 924-9259 (C.D. Cal. 2009) (“Since 1989, [§ 1117] statutory damages for a
28 violation of [§ 1125(a)] for infringement of an unregistered mark are “subject to” the provisions
of the [§ 1111] requirements of notice. But because the [§ 1111] requirement of notice only
applies to registered marks, it is, of course, not a limitation on recovery of damages under a
[§ 1125(a)] count for infringement of an unregistered mark . . . *McCarthy on Trademarks, supra*,
§ 19:144 (emphasis added); see also *GTFM, Inc. v. Solid Clothing, Inc.*, 215 F. Supp. 2d 273, 306
(S.D.N.Y. 2002) (stating that for any infringement occurring before date of mark’s registration
plaintiff could recover profits and damages under 15 U.S.C. § 1125(a), but for all infringement
occurring after date of registration plaintiff had to satisfy notice requirements of § 1111 to recover
profits and damages).”).

1 984, 989 (9th Cir. 1995) (“[T]he burden of any uncertainty in the amount of damages should be
2 borne by the wrongdoer”); *Kamar Int’l, Inc. v. Russ Berrie & Co., Inc.*, 752 F.2d 1326, 1332
3 (9th Cir. 1984); *Maier Brewing Co. v. Fleischmann Distilling Corp.*, 390 F.2d 117, 124 (9th Cir.
4 1968); *Landes Mfg. Co. v. Chromodern Chair Co.*, No. CV 76-3540, 1978 U.S. Dist. LEXIS
5 15095, at *11 (C.D. Cal. Oct. 5, 1978). Ninth Circuit Model Civil Jury Instructions, Comment to
6 15.26 Trademark Damages—Defendant’s Profits (15 U.S.C. § 1117(a)) (“The Ninth Circuit has
7 not addressed, and other circuits are divided on, whether willfulness remained a prerequisite to
8 disgorgement of a defendant’s profits as a result of the Trademark Amendments Act of 1999,
9 Pub. L. 106-43, § 3(b), 113 Stat. 218, 219 (codified in relevant part at 15 U.S.C. § 1117).
10 However, even prior to the 1999 Amendments, the Ninth Circuit suggested that willfulness was
11 not always a requirement for the award of profits. *See Adray v. Adry-Mart*, 76 F.3d at 988 (“An
12 instruction that willful infringement is a prerequisite to an award of defendant’s profits may be an
13 error in some circumstances ([such] as when plaintiff seeks the defendant’s profits as a measure
14 of [plaintiff’s] own damage [citation omitted]”).”)
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BREACH OF CONTRACT JURY INSTRUCTIONS

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PROPOSED FINAL JURY INSTRUCTION NO. 83
BREACH OF CONTRACT – OBLIGATION TO TIMELY DISCLOSE INTELLECTUAL
PROPERTY RIGHTS (“IPR”)

Apple’s Proposed Instruction

The ETSI IPR Policy provides that a member must use its reasonable endeavors during the development of a standard where it participates to disclose essential intellectual property rights. Where a member has submitted a technical proposal for a standard, it shall, on a bona fide basis, disclose all intellectual property rights that might be essential if that proposal is adopted. In order to demonstrate breach of this contract provision, Apple must prove that Samsung did not fulfill this obligation, that Apple was harmed, and that this harm was caused by Samsung’s failure to perform this obligation. Apple is not required to prove that Samsung’s alleged breach was the sole cause of its injury. Apple is required to prove that Samsung’s alleged breach was a material cause of its injury.

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ANTITRUST JURY INSTRUCTIONS

1 **PROPOSED FINAL JURY INSTRUCTION NO. 88**
2 **MONOPOLIZATION — ANTICOMPETITIVE BEHAVIOR IN STANDARD-SETTING**

3 **Apple’s Proposed Instruction**

4 Apple alleges that Samsung willfully acquired monopoly power based on anticompetitive
5 behavior in connection with the UMTS standard-setting process at 3GPP. Apple and Samsung
6 agree that Samsung was obligated to abide by the ETSI IPR Policy when participating in
7 standard-setting activities related to the UMTS standard.

8 Based on the available information, a standard-setting organization can select the best technology
9 (considering its cost and its performance) and can include that technology in the standard. To the
10 extent the industry has invested in a standard and cannot easily transfer that investment to an
11 alternative standard, the process of standardization may eliminate alternative technologies. When
12 a patented technology is incorporated into such a standard, adoption of the standard may
13 eliminate alternatives to the patented technology.

14 As to Apple’s claims that Samsung failed to timely disclose IPR (including patents and patent
15 applications) that may cover technology being considered for inclusion in the UMTS standard,
16 you may find that Samsung willfully acquired or maintained monopoly power through
17 anticompetitive acts if: (1) the ETSI IPR Policy created an expectation that participants would
18 timely disclose IPR that reasonably might cover technology being considered for adoption in the
19 UMTS standard; (2) Samsung knowingly failed to disclose such IPR in a timely fashion;
20 (3) 3GPP relied on the requirement that Samsung would timely disclose such IPR when 3GPP
21 created the UMTS standard; and (4) Samsung later attempted to enforce such IPR against a
22 standard-compliant product.

23 As to Apple’s claims that during the standard-setting process Samsung concealed its true
24 intentions not to meet the commitment it had made to license its declared-essential IPR on fair,
25 reasonable, and non-discriminatory (“FRAND”) terms, you may find that Samsung willfully
26 acquired or maintained monopoly power through anticompetitive acts if: (1) the ETSI IPR Policy
27 created an expectation that participants would truthfully disclose their intentions whether or not to
28 license their declared-essential IPR on FRAND terms; (2) Samsung knowingly concealed its true
29 intentions; (3) 3GPP relied on the requirement that Samsung would truthfully disclose its
30 intentions whether or not license its declared-essential IPR on FRAND terms when 3GPP adopted
31 the UMTS standard; and (4) Samsung later attempted to enforce such IPR against a standard-
32 compliant product in a manner inconsistent with its FRAND commitments.

33 In determining whether Apple has proved that Samsung willfully acquired monopoly power, you
34 may consider Samsung’s course of conduct as a whole and its overall effect, rather than focusing
35 on a particular aspect of Samsung’s disclosure or licensing conduct in isolation.

36 **Source**

37 Adapted from instructions in *Hynix Semiconductor Inc., v. Rambus Inc.*, No. 5:06-CV-00244-
38 RMW, Dkt. No. 1254, filed Mar. 25, 2008 (N.D. Cal.).

39 **Authorities**

40 *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 315 (3d Cir. 2007); *Research in Motion, Ltd. v.*
41 *Motorola, Inc.*, 644 F. Supp. 2d 788, 793 (N.D. Tex. 2008).

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**PROPOSED FINAL JURY INSTRUCTION NO. 89
MONOPOLIZATION — SAMSUNG’S INTENT**

Apple’s Proposed Instruction

In determining whether or not Samsung willfully acquired monopoly power in a relevant technology market, you may consider any evidence that Samsung intended to deceive ETSI to the extent it helps to understand the likely effect of Samsung’s conduct. Specific intent to monopolize, however, is not required for one to be liable for monopolization; only the intent to commit the acts that resulted in monopolization.

Source

Adapted from instructions in *Hynix Semiconductor Inc., v. Rambus Inc.*, No. 5:06-CV-00244-RMW, Dkt. No. 1254, filed Mar. 25, 2008 (N.D. Cal.).

Authorities

Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 US 585, 602 (1985).

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**PROPOSED FINAL JURY INSTRUCTION NO. 90
MONOPOLIZATION — INTERSTATE CONDUCT**

Apple’s Proposed Instruction

The federal antitrust laws apply only to conduct that affects interstate commerce. In this case, there is no dispute that Samsung’s conduct affected interstate commerce.

Source

Adapted from instructions in *Hynix Semiconductor Inc., v. Rambus Inc.*, No. 5:06-CV-00244-RMW, Dkt. No. 1254, filed Mar. 25, 2008 (N.D. Cal.).

