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 16 APPLE INC.

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN JOSE DIVISION

20 APPLE INC.,
 21 Plaintiff,
 22 v.
 23 SAMSUNG ELECTRONICS CO., LTD., a
 24 Korean corporation; SAMSUNG
 25 ELECTRONICS AMERICA, INC., a New
 26 York corporation; and SAMSUNG
 27 TELECOMMUNICATIONS AMERICA,
 28 LLC, a Delaware limited liability company,
 Defendants.

Case No.: C-11-01846 (LHK)
**OPPOSITION TO DEFENDANTS'
 MOTION TO DISQUALIFY BRIDGES
 & MAVRAKAKIS, LLP**
 Date: August 24, 2011
 Time: 2:00 p.m.
 Place: Courtroom 8, 4th Floor
 Honorable Lucy H. Koh

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1 **I. INTRODUCTION**

2 Disqualification is designed to remedy actual conflicts, not illusory ones. Samsung seeks
3 to deprive Apple of its counsel, Bridges & Mavrakakis LLP, on the basis of a representation the
4 law firm did not agree to undertake, has not undertaken, and which is being handled by a separate
5 law firm. As a matter of settled law in this district and elsewhere, Samsung's motion should be
6 denied.

7 This action involves two wholly distinct sets of claims. Apple's claims, as asserted in its
8 First Amended Complaint, allege Samsung's infringement of Apple intellectual property involving
9 the look, feel, and user interface of the iPhone, iPad, and iPod touch. Samsung's claims,
10 originally filed as a separate civil action, are based largely on the alleged infringement of Samsung
11 patents involving protocols for wireless communication between a mobile device and a cellular
12 network. These separate sets of claims are now housed under one case number only because,
13 shortly before bringing this motion, Samsung dismissed its separate action and refiled its claims as
14 permissive counterclaims in the present case.

15 As suggested by Samsung's original separate civil action, and as confirmed by the
16 pleadings, Apple's claims and Samsung's claims have no common issues of law, fact, or
17 technology. Consistent with this, Apple elected to be represented by different law firms in each
18 case. To prosecute Apple's affirmative claims, Apple has retained Morrison & Foerster LLP
19 ("Morrison") and Bridges & Mavrakakis LLP ("Bridges"). To defend against Samsung's
20 unrelated claims, Apple has retained Wilmer Cutler Pickering Hale and Dorr LLP
21 ("WilmerHale").

22 Bridges recognized from the outset of its representation of Apple that there are limits to its
23 ability to act adversely to Samsung. While at Kirkland & Ellis, several Bridges lawyers
24 represented Samsung in matters related to certain current Samsung counterclaims. Accordingly,
25 upon commencing work on Apple's claims in 2010, Bridges informed Apple that it was unable to,
26 and would not, represent Apple in any matter related to its prior work for Samsung. As a result,
27 Apple and Bridges limited the scope of the representation to Apple's claims against Samsung.
28 That limitation was reconfirmed in the spring of 2011. Bridges has at all times honored that

1 limitation. It has not played any role in defending Apple from Samsung’s claims.

2 Samsung nonetheless insists that, because Apple’s claims and Samsung’s claims are now
3 housed under one case number, disqualification is mandatory. This argument must be rejected, for
4 three reasons.

5 First, Bridges’ limited representation of Apple is not substantially related to its lawyers’
6 prior representation of Samsung. The current and prior representations share no overlap in
7 contested legal issues, facts, products, or technology, grew out of different competitive
8 environments, and are separated in time by almost four years in a rapidly changing marketplace.
9 Samsung’s further argument that Bridges learned a specialized litigation “playbook” relevant to
10 Apple’s claims is unsupported by the evidence and barred by California law.

11 Second, the limitation on the scope of the representation that Apple and Bridges
12 established is fully effective to eliminate a possible conflict. Caselaw from this district,
13 California’s current and proposed ethics rules, and leading national authorities all recognize the
14 validity of limited representation to avoid a former-client conflict, especially where, as here, the
15 other matter is factually discrete, easily severable, and handled by a separate law firm.

16 Third, Samsung’s tactical decision to dismiss its separate action and bring unrelated claims
17 into this case cannot change the scope of Bridges’ representation. A change in case caption does
18 not convert a proper representation into an improper one. Any other result would allow Samsung
19 to unilaterally alter the scope of Apple’s attorney-client relationships, defeat its choice of counsel,
20 and prejudice its prospects in this litigation—all without any showing of actual or threatened harm
21 to Samsung.

22 Finally, if there is any residual concern on the part of Samsung or the Court based on the
23 two cases having been combined into a single action (as a result of Samsung’s tactical decision to
24 do so), Apple respectfully suggests that the proper and equitable remedy would be to sever the two
25 cases and proceed with Apple’s claims as a separate matter—as Apple suggested in its pending
26 motion for an expedited trial.

1 **II. FACTUAL BACKGROUND**

2 **A. APPLE’S CLAIMS AGAINST SAMSUNG**

3 Apple filed its Complaint against Samsung in the present action on April 15, 2011, and its
4 First Amended Complaint on June 16, 2011. In its Complaint, Apple alleges that Samsung’s new
5 line of Android-based smartphones and tablets infringe several Apple intellectual property rights
6 that cover the distinctive design and user interface of products such as the iPhone, iPad, and iPod
7 touch, and the software and hardware associated with the multitouch user interfaces of those
8 products. In particular, Apple asserts ten design and utility patents and also brings claims for
9 trademark infringement, trade dress infringement, and unfair competition.

10 To pursue its intellectual property claims against Samsung, Apple retained Morrison and
11 Bridges. Declaration of Jayna Whitt in Support of Opposition (“Whitt Decl.”), ¶ 4. Bridges
12 attorneys are very familiar with Apple’s patent portfolio, having performed detailed intellectual
13 property and technical analysis for Apple in the past. Declaration of Kenneth H. Bridges in
14 Support of Opposition (“Bridges Decl.”), ¶ 38. The Bridges attorneys have also spent a significant
15 amount of time analyzing whether Apple’s intellectual property rights have been infringed by
16 Samsung and other Android-based mobile-phone manufacturers. Bridges Decl., ¶¶ 7, 38;
17 Declaration of Michael T. Pieja in Support of Opposition (“Pieja Decl.”), ¶ 8.

18 At the beginning of this representation of Apple, the Bridges attorneys made clear that they
19 could not represent Apple in any matter relating to their prior representation of Samsung. Bridges
20 Decl., ¶¶ 28, 29; Whitt Decl., ¶ 6. Accordingly, Bridges attorneys and Apple limited the scope of
21 the representation to Apple’s intellectual property claims against Samsung’s Android-based
22 smartphones and tablets, and agreed that Bridges attorneys would not work on any Samsung
23 patents or related claims. That limitation was reconfirmed in April 2011. Bridges Decl., ¶¶ 28,
24 29.

25 **B. SAMSUNG’S CLAIMS AGAINST APPLE**

26 On April 27, 2011, Samsung filed a separate civil action against Apple in the United States
27 District Court for the Northern District of California, Case No. C-11-02079. The Samsung
28 complaint alleged the infringement of several Samsung patents involving UMTS wireless

1 communications standards. Apple retained the law firm of WilmerHale to defend the Samsung
2 complaint. Whitt Decl., ¶ 5.

3 All of Samsung's original claims involved different legal, factual, and technical issues than
4 Apple's claims.¹ There is no overlap in file histories, inventors, or technical standards, or any
5 similarity among issues of claim construction, infringement, or invalidity. For example, while
6 Apple's patents center on the design of, and user-interface technology used in, the iPhone and
7 iPad, Samsung's patents largely involve aspects of the protocols used to implement UMTS
8 wireless communications between a mobile device and the cellular network.

9 **C. BRIDGES HAS OBSERVED THE LIMITS OF ITS REPRESENTATION**

10 Bridges has had no involvement in Apple's defense of Samsung's claims. Bridges Decl.,
11 ¶ 8. It has never advised Apple or any of its outside counsel, including WilmerHale and Morrison,
12 on any issues related to Samsung's claims. It has never communicated any Samsung confidential
13 information to Apple or to anyone representing Apple. Bridges Decl., ¶ 36; Pieja Decl., ¶ 18;
14 Declaration of Christopher Lubeck in Support of Opposition ("Lubeck Decl."), ¶ 8; Declaration of
15 James A. Shimota in Support of Opposition ("Shimota Decl."), ¶ 8; Declaration of Howard E.
16 Levin in Support of Opposition ("Levin Decl."), ¶ 8; Declaration of Brian C. Kwok in Support of
17 Opposition ("Kwok Decl."), ¶ 10; Declaration of Thomas C. Mavrakakis in Support of Opposition
18 ("Mavrakakis Decl."), ¶ 7. WilmerHale has worked to defend Apple from Samsung without any
19 input from Bridges. Declaration of Mark Selwyn in Support of Opposition ("Selwyn Decl."), ¶ 6.
20 This division of representation has continued even following Samsung's decision on June 30,
21 2011 to refile its case as permissive counterclaims in the present action.

22 **D. THE PRIOR REPRESENTATION OF SAMSUNG**

23 Bridges attorneys have recognized from the outset the ethical limitations flowing from
24

25 ¹ The Court previously related the two cases under Local Rule 3-12, a designation designed to
26 "preserve judicial economy." See *Hynix Semiconductor, Inc. v. Rambus, Inc.*, No. C-00-20905,
27 2008 U.S. Dist. LEXIS 68625, at *13 (N.D. Cal. Aug. 14, 2008). Under the text of the rule, the
28 only additional factor required for cases to be related is that both involve "substantially the same
parties" in the two actions—not an overlap in law, fact, or asserted claims. Local Rule 3-12(a)(1).

1 their prior representation of Samsung. Those limitations arise from work that certain Bridges
2 attorneys performed when they were employed at a different law firm, Kirkland & Ellis LLP,
3 mostly in 2006-2007. Bridges Decl., ¶¶ 12-14; Pieja Decl., ¶¶ 9, 10; Kwok Decl., ¶ 4; Levin
4 Decl., ¶¶ 4, 5; Shimota Decl., ¶ 4; Lubeck Decl., ¶ 4. Although Samsung mentions three
5 representations in its moving papers, only one, the “*Ericsson*” litigation, is alleged to have any
6 connection to the issues in dispute.²

7 The *Ericsson* litigation commenced in February 2006 and settled in July 2007. That
8 litigation concerned an older generation of cellular telephone products—none of which are at issue
9 here. Bridges Decl., ¶¶ 12, 13, 22, 24. Samsung and Ericsson litigated in the International Trade
10 Commission (“ITC”) and the Eastern District of Texas. Bridges Decl., ¶ 14. Samsung filed a
11 complaint against Ericsson in the ITC asserting Samsung patents related to certain GSM and
12 UMTS wireless standards, particularly certain aspects of the low-level protocols used to encode
13 and compress data for air transmission, as well as a dictaphone-like voice recording
14 functionality. Ericsson responded with its own ITC complaint, accusing Samsung of infringing
15 Ericsson patents related to mobile phone power management, key pads, SIM cards, LCD
16 backlighting, multimode transceivers, and power amplifiers. Due to the relative schedules of the
17 cases, the litigation between the parties in the Eastern District of Texas remained at a relatively
18 early stage when the parties settled.

19 The Bridges lawyers’ representation of Samsung in *Ericsson* involved one of the same
20 patents that has been asserted in Samsung’s current counterclaims (the ’604 patent). Bridges Decl.,
21 ¶ 20. The former representation also involved Ericsson’s defense that Samsung was obligated to
22 license its patents on fair, reasonable and non-discriminatory (“FRAND”) terms. Bridges Decl.,
23

24 ² The Motion and Kim Declaration reference, but provide no details about, two other prior
25 representations: the *Spansion* and *Dicam* matters. In *Spansion*, Bridges attorneys worked on
26 patents related to flash memory and semiconductor etching equipment. Lubeck Decl., ¶ 4; Levin
27 Decl., ¶ 5. In *Dicam*, a Bridges attorney worked briefly on a case that public filings show
28 involved the assertion of a 1989 patent related to a handheld personal security system. Shimota
Decl., ¶ 4; *Dicam, Inc. v. United States Cellular Corp.*, Case No. 1:07-CV-05668 (Docket Item
No. 1, Oct. 5, 2007).

1 ¶ 28. Apple, represented by WilmerHale, has asserted such a defense here. Recognizing the
2 potential overlap between the *Ericsson* representation and Samsung’s current claims, Bridges and
3 Apple have excluded Samsung’s claims from the scope of Bridges’ representation, and Bridges
4 has never worked on them. Bridges Decl., ¶¶ 28, 29.

5 **E. SAMSUNG’S EFFORTS TO DISQUALIFY BRIDGES**

6 The involvement of Bridges attorneys in Apple’s affirmative claims against Samsung has
7 been known to Samsung for almost a year. On September 9, 2010, Bridges attorneys Thomas
8 Mavrakakis and Michael Pieja attended a meeting with Apple’s Senior Director and Chief Patent
9 Counsel, Richard Lutton, Jr., and five Samsung employees. The Bridges attorneys introduced
10 themselves by name, and identified their firm as counsel for Apple in the matter. Mr. Lutton and
11 Mr. Mavrakakis then made a presentation to discuss Samsung’s infringement of Apple’s patents
12 and intellectual property rights. Bridges Decl., ¶ 9; Pieja Decl., ¶ 5; Mavrakakis Decl., ¶ 5.

13 Bridges appeared in this action on Apple’s First Amended Complaint on June 16, 2011.
14 Bridges Decl., ¶ 4. On June 27, 2011, Bridges received a letter addressed to Kenneth Bridges
15 from counsel for Samsung, Quinn Emmanuel attorney Victoria Maroulis. Pieja Decl., ¶ 14. In her
16 letter, Ms. Maroulis raised questions for the first time about a potential conflict between Bridges’
17 work on Apple’s claims and its prior representation of Samsung. On June 29, 2011, Bridges
18 attorney Michael Pieja responded to the letter by explaining that Apple’s case did not involve any
19 issues related to the prior work for Samsung. Pieja Decl., ¶ 15. The next day, Samsung dismissed
20 its separate civil action against Apple and refiled substantially the same case as permissive
21 counterclaims in the present action.³ Bridges Decl., ¶ 32. Eleven days later, Samsung filed the
22 present disqualification motion.

23
24 _____
25 ³ Compared with its earlier separate complaint, Samsung’s counterclaims added certain utility
26 patents, but none is related to Apple’s claims. The additional Samsung patents involve camera
27 functions (the ’893 and ’460 patents), playback of MP3 music files (the ’711 patent), and time
28 zones (the ’055 patent). Only one of Samsung’s twelve patents relates to the user interface (the
’871 patent), and that patent involves dividing the display into separate areas when composing a
text message—a feature none of Apple’s asserted patents addresses. (Docket Item No. 80.)

1
2 **III. LEGAL ARGUMENT**

3 **A. DISQUALIFICATION IS DISFAVORED AS A MATTER OF LAW,**
4 **ESPECIALLY WHEN SOUGHT FOR TACTICAL ADVANTAGE.**

5 Motions for disqualification are viewed skeptically, judged strictly, and denied routinely.
6 Disqualification is a “drastic measure which courts should hesitate to impose except when of
7 absolute necessity.” *In re Marvel*, 251 B.R. 869, 871 (N.D. Cal. 2000); *Concat LP v. Unilever,*
8 *PLC*, 350 F. Supp. 2d 796, 814 (N.D. Cal. 2004); *see also Visa U.S.A., Inc. v. First Data Corp.*,
9 241 F. Supp. 2d 1100, 1104 (N.D. Cal. 2003) (“strongly disfavored”).

10 Disqualification is disfavored because it frustrates the client’s right to counsel, impinges on
11 the attorney’s interest in a representation, and imposes a financial burden in replacing disqualified
12 counsel. *People ex rel. Dept. of Corps. v. Speedee Oil Change Systems, Inc.*, 20 Cal. 4th 1135,
13 1144-45 (1999). In addition, disqualification is often “used for purely strategic purposes to delay
14 the litigation, harass the opposing party or pressure for a more favorable settlement.” *H.F.*
15 *Ahmanson & Co. v. Salomon Brothers, Inc.*, 229 Cal. App. 3d 1445, 1454 (1991). Such tactical
16 abuse “derail[s] the efficient progress of litigation” and imposes significant “cost and
17 inconvenience to clients and the judicial system.” *Synergy Tech & Design, Inc. v. Terry*, 2007
18 U.S. Dist. LEXIS 34463 at *18 (N.D. Cal. May 2, 2007).

19 Accordingly, motions to disqualify are subject to “particularly strict judicial scrutiny,”
20 *Optyl Eyewear Fashion Int’l Corp. v. Style Cos.*, 760 F.2d 1045, 1050 (9th Cir. 1985), and the
21 moving party bears a “heavy burden and must satisfy a high standard of proof.” *In re Marvel*, 251
22 B.R. at 871. When Samsung’s motion is subject to this exacting standard, it must fail.

23 **B. BRIDGES’ LIMITED REPRESENTATION OF APPLE DOES NOT HAVE**
24 **A “SUBSTANTIAL RELATIONSHIP”—OR INDEED ANY CONNECTION**
25 **AT ALL—TO BRIDGES’ PRIOR WORK FOR SAMSUNG.**

26 California Rule of Professional Conduct 3-310(E) states that a lawyer shall not accept
27 employment adverse to a former client if the lawyer obtained “confidential information material to
28

1 the [present] employment.”⁴ When there is a “substantial relationship” between successive
2 representations, the acquisition of material information is presumed. *City and County of San*
3 *Francisco v. Cobra Solutions, Inc.*, 38 Cal. 4th 839, 846-47 (2006). The “evaluation of whether
4 the two representations are substantially related centers precisely upon the factual and legal
5 similarities of the two representations.” *Farris v. Fireman’s Fund Ins. Co.*, 119 Cal. App. 4th 671,
6 679 (2004).⁵

7 Instead of merely alleging “subject matter overlap” between the two representations
8 (Motion at 5:1, 13:22), Samsung has the burden of setting forth “direct evidence” that the facts or
9 issues involved in the prior representation, or the type of confidential information presumptively
10 acquired, would be material to Apple’s claims. *See Faughn v. Perez*, 145 Cal. App. 4th 592, 595-
11 96, 601-02 (2006). Information is “material” to the second representation only if it is “directly in
12 issue or of critical importance.” *Farris*, 119 Cal. App. 4th at 680. Samsung cannot make this
13 showing because nothing from the prior representation has any connection to the evaluation,
14 prosecution, settlement, or accomplishment of Apple’s current claims.⁶

15 Specifically, Bridges’ present representation of Apple involves wholly different patents,
16 products, claims, and technologies from the representation its lawyers undertook for Samsung
17 while at Kirkland & Ellis. In their prior work for Samsung in *Ericsson* (as described further in
18 Part II.D), Bridges lawyers assisted in litigation between Samsung and Ericsson in the ITC

19
20 ⁴ A federal court sitting in California “applies California law and looks to California standards of
21 professional responsibility in determining matters of disqualification.” *Krzyzanowski v. Orkin*
Exterminating Co., 2009 U.S. Dist. LEXIS 113200, *8 (N.D. Cal. Nov. 19, 2009).

22 ⁵ While Samsung states in passing that Bridges attorneys “acquired confidential information”
23 (9:22-23), it does not set forth any evidence of the actual receipt of such information, relying
24 instead on the substantial relationship test throughout its motion. *See Faughn v. Perez*, 145 Cal.
25 App. 4th 592, 604 (2006) (“notwithstanding the general assertion made in its moving papers, [the
moving party] did not rely on [the lawyer’s] actual knowledge of confidential information as the
basis for its motion”).

26 ⁶ The majority of Samsung’s motion discusses the relationship between the prior work for
27 Samsung and Samsung’s *counterclaims*—a relationship Bridges concedes and has never
28 questioned. As set forth below, Samsung’s discussion of this point is not relevant, because
Bridges’ representation does not extend to Samsung’s claims. *See* Parts II.C-D.

1 concerning an older generation of cellular telephones based on fundamentally different software.⁷
2 Bridges Decl., ¶¶ 21-25. The Samsung patents in those matters related primarily to certain aspects
3 of the GSM and UMTS wireless standards, while Ericsson’s patents covered discrete technical
4 aspects of cellular devices, such as power management, key pads, SIM cards, LCD backlighting,
5 multimode transceivers, and power amplifiers. No patents involved touchscreen technology,
6 touch-based user interfaces, or the Android operating system. Bridges Decl., ¶ 22.

7 In contrast, Apple’s current claims address whether Samsung’s Android-based
8 smartphones and tablets copy the look, design, and user interface of the iPhone, iPad, and iPod
9 touch, and infringe Apple patents relating to multitouch hardware and software. The prior and
10 current representations therefore have no overlap in patents, products, or technologies. Indeed,
11 Samsung did not market an Android-based phone until two years *after* the prior representation in
12 *Ericsson* ended. Bridges Decl., ¶¶ 22-26; Pieja Decl., ¶ 11. Likewise, none of the phones at issue
13 in *Ericsson* is marketed or sold today. None forms the basis of any Apple claims. None of the
14 patents at issue in *Ericsson* relate to any of Apple’s claims. As compared to the issues in
15 *Ericsson*, Apple’s patents do not cover wireless communications standards. The Samsung devices
16 accused of infringing Apple’s patents did not exist at the time of *Ericsson* and use entirely
17 different operating systems and user interfaces. Bridges Decl., ¶ 20-24; Pieja Decl., ¶ 10-11. In
18 short, the two representations are devoid of any “factual and legal similarities” that would
19 demonstrate a substantial relationship.

20 Samsung’s repeated assertions that both representations involve “mobile devices” or
21 “mobile technology” (2:9, 2:12, 11:18-19, 13:23, 13:26) cannot overcome this failure of proof. “It
22 takes more than similar general subject matter, like ‘insurance coverage’ or ‘tax liability,’ to
23 warrant disqualification.” *Wingnut Films, Ltd. v. Katja Motion Pictures Corp.*, 2007 U.S. Dist.
24 LEXIS 96132, *14 (C.D. Cal. Jan. 17, 2007); *see also H.F. Ahmanson & Co.*, 229 Cal. App. 3d at

25 _____
26 ⁷ As described further in footnote 2, the *Spansion* and *Dicam* matters have no conceivable
27 connection to Apple’s claims, and Samsung concedes as much with the lack of argument or detail
28 about them.

1 1456 (no relationship simply because both representations concerned “the general subject of credit
2 risk protection”). Courts are particularly wary of finding overlap in patent cases simply because a
3 set of patents shares the same technological field. *See generally Openwave Systems v. 724*
4 *Solutions, Inc.*, 2010 U.S. Dist. LEXIS 49628, *10 (N.D. Cal. Apr. 22, 2010) (insufficient that
5 “both [sets of patents] enable mobile subscribers to access information stored on the Internet from
6 mobile phone devices”) (internal quotation marks omitted). Samsung’s references to “mobile
7 technology” are particularly unpersuasive when Samsung’s lead counsel has already admitted that,
8 due to the rapid change in the mobile industry, “these phones, they have a shelf life, they’re like
9 cabbage, you have a shelf life of six months to a year max.” (6/17/11 Tr. at 32:11-14.)

10 Several courts have denied disqualification in patent cases despite a stronger showing of
11 similarity than Samsung makes here. *See, e.g., Microsoft Corp. v. Commonwealth Scientific &*
12 *Indus. Research Org.*, 2007 U.S. Dist. LEXIS 91550 (E.D. Tex. Dec. 13, 2007) (that both patent
13 representations “involved wireless LAN technologies” insufficient to support disqualification);
14 *Ciba-Geigy Corp. v. Alza Corp.*, 795 F. Supp. 711 (D.N.J. 1992) (that both patent representations
15 involved “transdermal patch” technology insufficient); *Arctic Cat, Inc. v. Polaris Indus.*, 2004
16 U.S. Dist. LEXIS 25463 (D. Minn. Dec. 20, 2004) (similar). These authorities are instructive,
17 especially because Samsung offers no evidence or explanation for how the prior representation in
18 *Ericsson* involved the same legal, factual, or technical issues as Apple’s current claims.

19 **1. Samsung’s “playbook” argument relies on vague generalities and fails**
20 **to establish what sort of confidential information would be “directly at**
21 **issue” in Apple’s affirmative case.**

22 Because there is no overlap between the *Ericsson* litigation and Apple’s affirmative case,
23 Samsung’s argument reduces essentially to the assertion that Bridges attorneys (and Kenneth
24 Bridges in particular) obtained confidential information about Samsung litigation strategies,
25 decision-makers, and business practices—that is, they learned Samsung’s litigation “playbook.”
(Motion 13-15).⁸

26 _____
27 ⁸ While the Kim Declaration references other matters involving Bridges attorneys, including the
28 *Spanision* and *Dicam* matters, the only “playbook” evidence offered concerns Kenneth Bridges and
(footnote continued)

1 But California “did not adopt the so-called playbook approach” to former-client conflicts
2 urged by Samsung. See *Farris*, 119 Cal. App. 4th at 680; *Hartford Cas. Ins. Co. v. Am. Dairy &*
3 *Food Consulting Labs*, 2010 U.S. Dist. LEXIS 70238, *9 (E.D. Cal. June 17, 2010) (“exposure to
4 general play book information...is not sufficient to disqualify an attorney”) (quotation marks
5 omitted).⁹ Where, as here, successive representations lack any legal or factual similarities, a
6 lawyer will not be disqualified on the basis of generalized testimony that the lawyer received
7 information about the former client’s structure, personnel, practices, or litigation philosophy.
8 *Farris*, 119 Cal. App. 4th at 680.

9 For example, Samsung repeatedly suggests that Bridges lawyers learned Samsung’s
10 “litigation strategy” (13:27-14:1), “strategy regarding patent litigation in general” (6:18-19),
11 “patent litigation defense strategies” (8:4-5), “global litigation strategy” (2:8-9), “litigation-
12 strategy decisions” (13:26-27), “highly sensitive litigation tactics and strategies” (14:21-22), and
13 “fundamental strategies” (7:25); Kim Dec. ¶ 7. Samsung also argues that Bridges knows about
14 “Samsung’s approach to patent litigation” (2:16-17), “the inner workings of Samsung’s IP Legal
15 Group” (15:1-2), “decision-making tendencies” (2:28-3:1), and “the way in which Samsung
16 pursues and defends itself in patent litigation” (14:24-25); Kim Dec. ¶ 7-8. But knowledge of “a
17 former client’s general litigation or settlement strategy is not sufficient to disqualify an attorney.”
18

19 his work on *Ericsson*. Kim Dec. ¶¶ 6-8. Further, there is no assertion or argument that the work
20 of the more junior Bridges lawyers involved with *Ericsson* concerned anything other than typical
21 patent defense and document review. Kim Dec. ¶¶ 9-11. Apple also objects to the Kim
22 Declaration on grounds of evidentiary inadmissibility. First, paragraphs 14-15 are inadmissible
23 because Ms. Kim lacks personal knowledge of the *Spansion* matter. Fed. R. Evid. 602. Second,
24 paragraphs 12-14 are inadmissible because Ms. Kim lacks person knowledge of the hours
25 allegedly billed. *Id.* Finally, Exhibits 1-3 are inadmissible because they have not been properly
26 authenticated, Fed. R. Evid. 901, and are hearsay. Fed. R. Evid. 802.

27 ⁹ Samsung relies on *Knight v. Ferguson*, 149 Cal. App. 4th 1207, 1215 (2007), for the proposition
28 that “knowledge about the former client’s attitudes, practices, business customs, litigation
philosophy, strengths, weaknesses or strategy” may be sufficient, standing alone, to warrant
disqualification. *Knight*, however, was a case where the lawyer in question had switched sides by
suing his former client on the very same lease and partnership agreement that had been the subject
of the prior representation. The statement in *Knight* was therefore unnecessary to the decision,
and, as shown herein, is contrary to the holdings of other decided cases.

1 *Hartford*, 2010 U.S. Dist. LEXIS 70238 at *9; *Farris*, 119 Cal. App. 4th at 680 (same); *Wingnut*
2 *Films*, 2007 U.S. Dist. LEXIS 96132 at *17-18 (same). Similarly, “generalized information
3 [about a company’s] approach to patent issues . . . would not support disqualification.” *Openwave*
4 *Systems*, 2010 U.S. Dist. LEXIS 49628 at *17-18, *see also Banning Ranch Conservancy v.*
5 *Superior Court*, 193 Cal. App. 4th 903, 918 (2011) (“special insight” into the client’s “approach to
6 land use matters” insufficient for disqualification).

7 Instead, to justify disqualification, the former client has the burden of proving both that
8 (1) the scope, intensity, and duration of the prior representation supports an inference that the
9 lawyer actually learned a specialized “playbook,” and (2) such client-specific information is
10 “material” to the second representation, meaning it is “directly in issue or of critical importance.”
11 *See Farris*, 119 Cal. App. 4th at 680; *Wingnut Films*, 2007 U.S. Dist. LEXIS 96132 at *14 (the
12 lawyer must have had “pervasive participation and [a] personal role in shaping the same practices
13 and procedures under attack in the subsequent lawsuit”); *accord*, Restatement (Third) of the Law
14 Governing Lawyers § 132 cmt. d(iii) (2000) (only when playbook “information will be directly in
15 issue or of unusual value in the subsequent matter will it be independently relevant in assessing a
16 substantial relationship”) (cited with approval in *Farris*); Charles W. Wolfram, *Former Client*
17 *Conflicts*, 10 Geo. J. Legal Ethics 677, 724 (1997) (“Wolfram, *Former Client Conflicts*”) (same).

18 The reason for requiring a showing of “materiality” is straightforward: Because playbook
19 information would presumably “equally benefit the new client in *any* sort of proceeding, whether
20 (otherwise) substantially related or not,” disqualification based solely on such information “would
21 portend both over-application of the substantial relationship test and a large increase in the number
22 of motions to disqualify.” *Id.* at 723.

23 The standard for disqualification is a demanding one. In those rare cases in which an
24 outside lawyer has been disqualified solely on the basis of imputed playbook knowledge, the
25 former client has presented compelling evidence that the attorney learned the client’s distinctive
26 litigation strategy through extended representation on multiple matters, and that the same policies,
27 practices, or decision-makers are centrally at issue in the current litigation. *See, e.g., Farris*, 119
28 Cal. App. 4th at 684 (coverage policies of former client that lawyer personally developed in over

1 200 separate representations were at the heart of the “evidentiary inquiry” in the present case).
2 Conversely, when proof supporting either element is lacking, disqualification is denied. *Faughn*,
3 145 Cal. App. 4th at 610; *Fremont Indem. Co. v. Fremont Gen. Corp.*, 143 Cal. App. 4th 50, 69
4 (2006); *Wingnut Films*, 2007 U.S. Dist. LEXIS 96132 at *12, 18 (that attorney was “in a position
5 to receive some confidential information about [defendant’s] music business practices” did not
6 amount to a “pervasive personal involvement with the ‘first look’ [soundtrack] agreements” that
7 were the subject of the second representation).

8 Samsung’s playbook claims do not satisfy either element of the standard. There is nothing
9 in the documented scope or duration of Mr. Bridges’ single representation of Samsung to support
10 an inference that specialized information about Samsung’s world-wide patent litigation strategy
11 “would normally have been imparted to [him] under the facts of the *actual* lawyer-client
12 relationship shown by the record.” *Openwave Systems*, 2010 U.S. Dist. LEXIS 49628 at *14-15.¹⁰
13 To the contrary, Mr. Bridges’ work for Samsung was largely limited to the defense against a
14 discrete set of technical Ericsson patents in the International Trade Commission. Bridges Decl.,
15 ¶¶ 14, 15. He did not develop, set, or participate in global litigation strategy or policy-making. *Id.*
16 ¶ 16. He did not participate in negotiations for the settlement of the case. *Id.* ¶ 17. Indeed, Mr.
17 Bridges was not even the senior lawyer at Kirkland & Ellis on the *Ericsson* team. Other more
18 senior lawyers handled strategic decision-making and client interaction. *Id.* ¶ 16. In fact, Mr.
19 Bridges was instructed that all contact with Samsung should be channeled through the senior team
20 members, and that he should not initiate contact with Samsung independently on matters of any
21 significance to the case—hardly the mark of someone privy to, let alone formulating, Samsung’s
22 global litigation strategy. *Id.* ¶ 18.

23 There is nothing here remotely approaching the level of involvement with company
24 policies and personnel demonstrated in *Farris*. 119 Cal. App. 4th at 684-85 (moving party showed

25 ¹⁰ Had Mr. Bridges actually learned such information, Samsung could easily have demonstrated
26 as much while protecting actual confidences. Playbook information concerns “facts that were
27 within [Samsung’s] control and that could have been disclosed without compromising confidential
28 information.” See *Faughn*, 145 Cal. App. 4th at 610.

1 that attorney was “instrumental in formulating those strategies and philosophies” that involve
2 “identical legal issues,” including helping “develop, modify, and interpret [company] practices,
3 policies and procedures” involved in present litigation).¹¹

4 More fundamentally, Samsung has failed to offer any direct evidence that four-year-old
5 information about Samsung’s patent strategy or business plans—had such information even been
6 acquired—would be “directly in issue or of unusual value” to Apple’s claims. *See Farris*, 119
7 Cal. App. 4th at 681; *Fremont*, 143 Cal. App. 4th at 69. The dissimilarity of the two matters belies
8 an inference of materiality, and Samsung offers no explanation for what particular information
9 would be relevant, or how. “Omitted facts become conspicuous by their omission, particularly
10 where the motion involved, like a motion to disqualify counsel, has the potential for tactical
11 abuse.” *Faughn*, 145 Cal. App. 4th at 601 (citation omitted).

12 Samsung has failed to carry its burden. The only plausible reading of the facts is that,
13 given the narrow scope of the prior representation, the passage of time, the different products,
14 patents, and technologies, the rapid change in mobile phone technology, and the discrete posture
15 of the two cases, Bridges attorneys obtained no specialized “playbook” information directly
16 relevant to Apple’s current claims. To conclude otherwise would be to adopt the sort of *de facto*
17 “lifetime prohibition against future representation of an opposing party” that the case law
18 disfavors. *See Banning Ranch*, 193 Cal. App. 4th at 918.

19
20
21 ¹¹ Some of Samsung’s allegations about Bridges attorneys are also unsupported by the record,
22 which is grounds enough for concluding that Samsung has not met its burden. *See Faughn*, 145
23 Cal. App. 4th at 601. For example, Samsung claims that Bridges attorneys obtained “highly
24 confidential technical and financial information” about Samsung mobile devices (8:3-4), learned
25 how “Samsung assesses risk for patent litigation” (15:4), and identified “personal pressure points”
26 (8:6-7). These assertions are found nowhere in the Kim Declaration or any other part of the
27 record. When the record repeatedly fails to support assertions made in the motion, the moving
28 party has “failed to carry its burden.” *Faughn*, 145 Cal. App. 4th at 610; *see also Liberty Nat’l*
Enters. v. Chicago Title Ins. Co., 194 Cal. App. 4th 839, 846 (2011) (“We look askance at this
practice of stating what purport to be facts—and not unimportant facts—without support in the
record. This is a violation of the rules, specifically rule 8.204(a)(1)(C) of the California Rules of
Court, with the consequence that such assertions will, at a minimum, be disregarded”).

1 **C. BRIDGES HAS PROPERLY LIMITED ITS REPRESENTATION**
2 **TO APPLE'S AFFIRMATIVE CLAIMS.**

3 There is no substantial relationship between Apple's claims and the prior work for
4 Samsung. There is, of course, a relationship between the prior work and *Samsung's claims*, but
5 Bridges has never defended Apple from Samsung's claims. *See* Part II-C. Indeed, it has never
6 worked on any of Apple's defenses against Samsung's claims, whether alone or with co-counsel.
7 Instead, from the outset, Apple's defense against Samsung has been handled by a different law
8 firm, WilmerHale. Samsung's decision to import its counterclaims into the present action cannot
9 alter that division of responsibility.

10 Notwithstanding these facts, Samsung insists that "as a matter of law and common sense"
11 (16:15-16), Bridges' representation of Apple must extend to Samsung's claims. But it makes no
12 sense to disqualify a law firm on the basis of a representation it has not undertaken. Under well-
13 settled law, Bridges' limited representation of Apple is sufficient to avoid a potential conflict. *See*
14 *Hilleby v. FMC Corp.*, 25 U.S.P.Q.2d 1413, 1415 (N.D. Cal. 1992) (Wilken, M-J.) (representation
15 may be limited to affirmative patent claims in complaint); *In re Plant Insulation Co.*, 414 B.R.
16 646, 654 (N.D. Cal. 2009) (limitation of representation is "the remedy most appropriate" for
17 potential conflict); California Proposed Rule of Professional Conduct 1.9(a) cmt. 4 (Sept. 2010) (a
18 lawyer may "avoid the application of [the substantial relationship rule] by limiting the scope of a
19 representation so as to exclude matters on which the lawyer has a conflict of interest");
20 Restatement (Third) of the Law Governing Lawyers § 132 cmt. e (2000) ("the lawyer may limit
21 the scope of representation of a later client so as to avoid representation substantially related to
22 that undertaken for a previous client"); N.Y.C. Bar Ass'n Comm. on Prof. and Judicial Ethics,
23 Formal Opinion No. 2001-3, 2001 WL 1870201 (July 6, 2001) (same); D.C. Bar Legal Ethics
24 Comm. Opinion No. 343 (Feb. 2008) (same); Wolfram, *Former-Client Conflicts* at 736 (the
25 "easiest case in which to accept such limited representation is in litigation representation,"
26 especially when "tasks in the new representation are assigned to different law firms"); Ronald D.
27 Rotunda, *Resolving Conflicts by Hiring 'Conflicts Counsel'*, 62 *Hastings L.J.* 677, 691, 699 (2011)
28 (when a different law firm "represent[s] the client on a discrete, easily severable matter," "public

1 policy, legitimate client expectations, and the emerging case law indicate that there is no valid
2 conflict of interest”) (addressing current client conflicts); Declaration of John Steele in Support of
3 Opposition (“Steele Decl.”), ¶¶ 11-18.

4 On facts quite similar to the current case, *Hilleby v. FMC Corp.* illustrates how a limited
5 representation in the patent arena does not create a former-client conflict. 25 U.S.P.Q.2d 1413. In
6 *Hilleby*, the law firm represented the plaintiff in asserting infringement of one patent, while the
7 defendant counterclaimed for infringement of a second patent. As in the present action, the law
8 firm in *Hilleby* had previously assisted the defendant in filings involving the second patent. The
9 court held that the law firm could not assert an invalidity defense against the defendant’s
10 counterclaims due to their “substantial relationship” to the prior patent work, but the law firm
11 “*would be allowed to remain as counsel on the complaint,*” because the affirmative claims were
12 distinct from the counterclaims. *Id.* at 1416 (emphasis added).¹² This is the exact litigation
13 posture in which Bridges finds itself.

14 Indeed, the grounds for recognizing the effectiveness of limited representation are stronger
15 here than in *Hilleby*. In *Hilleby*, the limitation of representation was a solution first proposed by
16 the court after the law firm had already acted outside its permitted scope. In this action, by
17 contrast, Bridges and Apple established the limited representation at the outset and have honored it
18 at all times. Further, though the complaint and counterclaims in *Hilleby* dealt with different
19 patents, both involved the “the same technology, the same expert witnesses, most of the same lay
20 witnesses and most of the same issues of patent validity and infringement.” *Id.* at 1415. In this
21 case, by contrast, the complaint and counterclaims concern different technology, different
22 witnesses, different patents, and different legal issues.

23 **1. Samsung’s permissive counterclaims cannot**
24 **enlarge the scope of Bridges’ representation,**
or create a conflict where none existed before.

25 Samsung insists that no matter how Bridges has limited its representation, disqualification
26

27 ¹² Ultimately, the plaintiff withdrew the invalidity defense that created the conflict.
28

1 is still mandatory because Samsung's unrelated counterclaims create a conflict. But Samsung's
2 tactics in fact militate *against* disqualification under the caselaw. Bridges should not be
3 disqualified for a "conflict" that it affirmatively sought to avoid and did not create.

4 First, the idea that a case heading or docket number determines the scope of Bridges'
5 representation is directly contrary to the caselaw. To hold as much would elevate form over
6 substance and obscure the obvious dissimilarities between the claims. Indeed, *Hilleby* implicitly
7 rejects the notion that docket number is dispositive. 25 U.S.P.Q.2d at 1416. There, the court
8 properly recognized that the claims and counterclaims were sufficiently discrete such that they
9 could be treated as separate representations, even though filed under the same docket number, as
10 here. *Id.* at 1416. Similarly, in *Sumitomo Corp. v. J.P. Morgan & Co.*, 2000 U.S. Dist. LEXIS
11 1252 (S.D.N.Y. Feb. 7, 2000), the client's successful motion to consolidate two related cases did
12 not require disqualification of a law firm that had limited its representation to one case, even
13 though the firm had a clear conflict on the second. Consolidation—and even joint discovery—did
14 not automatically enlarge the scope of the firm's representation to encompass the second case. *See*
15 *id.* at *14-15.¹³

16 Second, a contrary rule would allow Samsung to alter unilaterally the scope of the lawyer-
17 client relationship between Bridges and Apple. Bridges has never represented Apple in defending
18 Samsung's claims, now or before. Samsung's decision to refile its case as a permissive
19 counterclaim cannot change that. *See generally* Steele Decl. ¶¶ 12-13, 16-18. Samsung's tactics
20 do not create Bridges' ethical breach. In addition, disqualification would unjustly prejudice Apple
21 by depriving it of the services of a firm that is deeply knowledgeable concerning Apple's complete
22 intellectual property portfolio and how that portfolio reads on the Android system—at a time when
23

24 ¹³ Similarly, neither Rule 3-310(E) nor the relevant caselaw speak in terms of a substantial
25 relationship between *cases* or *dockets*. The comparison is made between *representations*. *See,*
26 *e.g., Cobra Solutions*, 38 Cal. 4th at 847 ("the former client may disqualify the attorney by
27 showing a 'substantial relationship' between the subjects of the prior and the current
28 *representations*"); *Farris*, 119 Cal. App. 4th at 679 (the substantial relationship test "centers
precisely upon the factual and legal similarities of the two *representations*") (all emphasis added).

1 Apple is seeking to bring its claims to hearing and trial on an expedited schedule.

2 Third, the limitation of representation that Apple and Bridges established is fully effective
3 under the caselaw cited above to protect Samsung's confidential information. This is not a case,
4 like those cited by Samsung in its brief (16:22-28), where a supposed limited representation
5 transparently failed to eliminate the attorney's conflict.¹⁴ Apple's claims and Samsung's claims
6 are wholly different matters with no overlap or connection, and it is both possible and appropriate
7 to handle them separately—as they have been handled to date. Moreover, this is not a situation,
8 like *Largo Concrete, Inc. v. Liberty Mutual Fire Insur.*, 2007 U.S. Dist. LEXIS 95690 (N.D. Cal.
9 Dec. 31, 2007) (cited at 16:17), that involves the risk that lawyers *within* a firm might share
10 information relevant to a representation. Here, Bridges is a separate firm from WilmerHale that
11 has no involvement in defending Samsung's claims. Contrary to Samsung's suggestion, the
12 division between the cases is not a matter of “mental gymnastics” (3:7-8), but formal
13 understandings concerning the scope of the separate representations, the division of responsibility,
14 and the strict prohibition on the disclosure of Samsung confidential information. Should the Court
15 have any further concerns with the present division of representation, Apple has no objection to
16 the entry of an order confirming the permitted scope of the representation, as was done in both
17 *Hilleby* and *Plant Insulation*. See generally Steele Decl. ¶¶ 19-26.

18 Fourth and finally, courts have the equitable power to decline disqualification when the
19 former client's tactical decision-making is the source of the claimed conflict. See, e.g., Paul W.
20 Vapnek et al., *Professional Responsibility*, § 4:327.5 (The Rutter Group 2010) (“Rutter Prof.

21 _____
22 ¹⁴ For example, in both *United States v. Cheshire*, 707 F. Supp. 235 (M.D. La. 1989), and *United*
23 *States v. Edwards*, 39 F. Supp. 2d 716 (M.D. La. 1999), the prosecution's key witnesses were
24 former clients of the defendant's attorney in substantially related matters. *Cheshire*, 707 F. Supp.
25 at 237, 239; *Edwards*, 39 F. Supp. 2d at 735, 744-45. In each case, the lawyer attempted to
26 eliminate the conflict by delegating cross-examination of the former client to another lawyer, but
27 retained responsibility for both opening and closing arguments, in which he would necessarily
28 have had to attack his former client's credibility. Understandably, both courts concluded that the
conflict had not been eliminated. Similarly, in *In re Lillian P.*, 238 Wis. 2d 449 (2000), a
concurrent conflict case, the lawyer brought in co-counsel but retained full responsibility for
representing joint clients whose interests sharply conflicted.

1 Resp.”) (“Courts generally deny disqualification or withdrawal motions based on a conflict of
2 interest where the conflict has been ‘manufactured’”); *see also Fed. Home Loan Mortgage Corp.*
3 *v. La Conchita Ranch Co.*, 68 Cal. App. 4th 856, 862 (1998) (“a party should not be able to create
4 [a conflict] through the simple expediency of filing a cross-complaint”); *Fox Searchlight Pictures,*
5 *Inc. v. Paladino*, 89 Cal. App. 4th 294 (2001) (similar).¹⁵ The exercise of that power is certainly
6 appropriate here.

7 **D. THE COURT HAS THE POWER TO SEVER APPLE’S CLAIMS FROM**
8 **SAMSUNG’S CLAIMS TO PROMOTE THE EFFICIENT**
9 **ADMINISTRATION OF JUSTICE AND AVOID PREJUDICE TO APPLE.**

10 Finally, if there is any residual concern on the part of Samsung or the Court with Bridges’
11 limited representation, Apple respectfully suggests that as an alternative to disqualification, the
12 Court sever or bifurcate Samsung’s counterclaims under Federal Rules of Civil Procedure 21 or
13 42—as Apple has suggested in its pending motion for an expedited trial. Such severance would
14 ameliorate Samsung’s concerns, avoid substantial prejudice to Apple, and promote the efficient
15 administration of justice.

16 As Apple argued in its Reply In Support of Motion for Expedited Trial (Docket No. 131,
17 July 22, 2011), there is a strong case for severance on the merits. Because Apple’s claims and
18 Samsung’s claims concern different patents, technologies, and products, severance would “further
19 the prompt and efficient disposition of litigation” by avoiding jury confusion over disparate,
20 unrelated patent claims. *See CVI/Beta Ventures, Inc. v. Custom Optical Frames, Inc.*, 896 F.
21 Supp. 505, 506 (D. Md. 1995). Indeed, courts “should not hesitate to sever claims based on
22 different factual situations from that of the main action.” 4-21 Moore’s Federal Practice,
23 § 21.02[4] (2011).

24 The policy interest in avoiding disqualification offers an additional factor in favor of
25 severance. A court may sever claims to avoid prejudice to any party. *See Applewhite v. Reichhold*

26 ¹⁵ A similar principle applies under the related “hot potato” rule. Normally, a lawyer cannot avoid
27 disqualification in a current-client conflict by dropping one client in favor of another. *See Truck*
28 *Ins. Exchange v. Fireman’s Fund Ins. Co.*, 6 Cal. App. 4th 1050, 1059 (1992). But an exception
may exist when the *client* created the conflict. *See id.* at 1058-59.

1 *Chems.*, 67 F.3d 571, 574 (5th Cir. 1995). Here, severance would avoid the severe prejudice to
2 Apple that would accompany disqualification, as discussed further in Part C.1, while vindicating
3 the strong public policy interest in favor of retaining the counsel of one's choice. Moreover, to the
4 extent that Samsung's concerns are based on the fact that both sets of claims are lodged under the
5 same docket number, severance would eliminate such concerns.

6 The Court has the inherent power to adopt such flexible procedures to avoid the more
7 drastic remedy of disqualification. *See generally UMG Recordings, Inc. v. MySpace, Inc.*, 526 F.
8 Supp. 2d 1046, 1063 (C.D. Cal. 2007) (exercising inherent power to shape litigation because
9 "courts should not apply the ethical rules in a way that is mechanical, didactic, or inflexible," but
10 should "take a 'functional' approach") (quotation omitted); *see also generally* Steele Decl. ¶¶ 20,
11 23-26. It would be appropriate to exercise such power here.

12
13 **E. ANY PUTATIVE DISQUALIFICATION SHOULD NOT EXTEND
TO MORRISON OR WILMERHALE.**

14 Finally, if the Court favors disqualification and declines to sever, disqualification must be
15 limited to the Bridges firm. In its motion, Samsung requested that Morrison, WilmerHale, and
16 Apple submit affidavits stating that each had not received any confidential information from
17 Bridges (Motion p. 17). Appropriate declarations to that effect are included in this Opposition.
18 As a consequence, the issue of disqualification of co-counsel is moot, and there is no possible
19 reason to extend disqualification to any other firm. The law does not presume that the confidential
20 information of a disqualified lawyer passes to co-counsel. *See In re Airport Car Rental Antitrust*
21 *Litigation*, 470 F. Supp. 495 (N.D. Cal. 1979); *Frazier v. Superior Court*, 97 Cal. App. 4th 23
22 (2002); *Oracle Am., Inc. v. Innovative Tech. Distributions, LLC*, 2011 U.S. Dist. LEXIS 78786 (N.D.
23 Cal. July 20, 2011); *accord* Rutter Prof. Resp., § 4:34.8; Restatement (Third) of the Law
24 Governing Lawyers § 123 cmt. c(iii), illus. 2 (2000); *Smith v. Whatcott*, 774 F.2d 1032 (10th Cir.
25 1985); *Panduit Corp. v. All States Plastic Mfg. Co.*, 744 F.2d 1564 (Fed. Cir. 1984); *Brennan's*
26 *Inc. v. Brennan's Rests., Inc.*, 590 F.2d 168 (5th Cir. 1979); *Akerly v. Red Barn System, Inc.*, 551
27 F.2d 539 (3d Cir. 1977).

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IV. CONCLUSION

For the reasons discussed above, Apple respectfully submits that Samsung's Motion to Disqualify should be denied.

Dated: August 1, 2011

Respectfully submitted,

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