

**EXHIBIT 22**  
**FILED UNDER SEAL**

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LTD., SAMSUNG ELECTRONICS AMERICA,  
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TELECOMMUNICATIONS AMERICA, LLC  
15

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

19 APPLE INC., a California corporation,

20 Plaintiff,

21 vs.

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

25 Defendant.  
26

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S SECOND SUPPLEMENTAL  
OBJECTIONS AND RESPONSES TO  
APPLE INC.'S FIFTH SET OF  
INTERROGATORIES (No. 12)**

**HIGHLY CONFIDENTIAL –  
ATTORNEYS' EYES ONLY  
UNDER THE PROTECTIVE ORDER**

**SUBJECT TO PROTECTIVE ORDER**  
**CONTAINS HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY INFORMATION**

1 F.3d 1361, 1366 (Fed. Cir. 2006) (noting that courts should consider "whether there are any  
2 concomitant utility patents" when ruling on invalidity due to functionality); *see also Power*  
3 *Controls Corp. v. Hybrinetics, Inc.*, 806 F.2d 234, 238-240 (Fed. Cir. 1986).

4 Samsung also incorporates by reference its Response to Apple’s Interrogatory No. 38,  
5 regarding functionality of Apple’s asserted design patents.  
6

7 **III. Invalidity Due to Indefiniteness**

8 The asserted claims of the D’790, D’305, and D’334 patents are also invalid under  
9 paragraph 2 of Section 112 of Title 35 of the United States Code because the claims are indefinite  
10 in that the drawings and pictures depicting the design do not enable a person skilled in the art to  
11 make the design.  
12

13 For example, the patents are not limited to scale. A designer skilled in the art would not  
14 know from the designs how to scale the elements in the design. For example, if the designer were  
15 to enlarge the screen, it is unclear whether the icons would also need to be enlarged  
16 proportionately, or if the icons should remain the same size so that new rows or columns of icons  
17 could be added. If new squares or icons were to be added, the patent does not indicate what those  
18 squares or icons should depict, if anything.  
19

20 Further, the use of broken or dashed lines within the figures of the D’790, D’305, and  
21 D’334 patents is confusing and contrary to convention and creates uncertainty as to the scope of  
22 the design and whether certain elements are or are not a part of the design, or are intended to be  
23 less important aspects of the design, which is prohibited. *See* MPEP 1503.02. The description of  
24 the broken lines in the Description section is also unhelpful in overcoming the uncertainty and  
25 indefiniteness inherent in the designs of the D’790, D’305, and D’334 patents.  
26

27 **IV. Invalidity Due to Double Patenting**  
28

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1           The asserted claims of the D'305 and D'334 patent are also invalid under the doctrine of  
2 double patenting because they are substantially the same design. D'790, D'305, and D'334 also  
3 appear to be very similar designs to several of Apple's non-asserted design patents: D597,101 and  
4 D644,239.  
5

6 **IV. Invalidity of D'334 Under 35 USC 102(b)**

7           The D'334 patent is invalid under 35 U.S.C. 102(b) because the design was in public use  
8 or on sale in the United States more than a year before the date the D'334 patent application was  
9 filed. The original iPhone practiced the D'334 patent and was either in public use, on sale, or both  
10 more than one year prior to July 15, 2008, the date the D'334 patent application was filed.  
11

12 **IV. Incorporation by Reference of Other Materials**

13           In support of all of its bases for invalidity of Apple’s asserted graphical user interface  
14 design patents, Samsung also incorporates by reference the deposition testimony of all Apple  
15 witnesses providing testimony related to these design patents, including but not limited to Imran  
16 Chaudhri, Freddy Anzures, Scott Forstall, Steve Lemay, and Evans Hankey, as well as all  
17 deposition testimony provided by third parties, and all exhibits used in those depositions.  
18 Samsung also incorporates by reference all testimony provided by Samsung witnesses. Moreover,  
19 because Apple delayed in providing Samsung with identities of all individuals involved in the  
20 designs and alleged embodiments at issue, Samsung currently does not have all relevant testimony  
21 on these issues.  
22  
23

24           Samsung further incorporates by reference the file histories of the D'790, D'305, and D'334  
25 patents, including any documents cited in those file histories, and any continuing applications  
26 from the D'790, D'305, and D'334 patents including reexaminations and reissue applications and  
27 all documents cited during those proceedings; all documents cited on the face of or in the D'790,  
28

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1 D'305, and D'334 patents; all related patents and file histories; and all of the documents produced  
2 or to be produced by Apple or third parties constituting prior art.

3  
4 Samsung also incorporates by reference the Declaration of Itay Sherman in Support of  
5 Samsung’s Opposition to Apple’s Motion for a Preliminary Injunction (Dkt. No. 172), and any  
6 and all expert reports that have been or may be submitted in this action that support the invalidity  
7 of Apple’s asserted design patents.

8  
9  
10 Samsung’s investigation is ongoing and Samsung will supplement this interrogatory after a  
11 reasonable investigation and further discovery from Apple on the basis for its infringement and  
12 validity positions.

13  
14 DATED: March 29, 2012

Respectfully submitted,

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