

1 HAROLD J. MCELHINNY (CA SBN 66781)  
 hmcclhinny@mofo.com  
 2 MICHAEL A. JACOBS (CA SBN 111664)  
 mjacobs@mofo.com  
 3 RACHEL KREVANS (CA SBN 116421)  
 rkrevans@mofo.com  
 4 JENNIFER LEE TAYLOR (CA SBN 161368)  
 jtaylor@mofo.com  
 5 ALISON M. TUCHER (CA SBN 171363)  
 atucher@mofo.com  
 6 RICHARD S.J. HUNG (CA SBN 197425)  
 rhung@mofo.com  
 7 JASON R. BARTLETT (CA SBN 214530)  
 jasonbartlett@mofo.com  
 8 MORRISON & FOERSTER LLP  
 425 Market Street  
 9 San Francisco, California 94105-2482  
 Telephone: (415) 268-7000  
 10 Facsimile: (415) 268-7522

WILLIAM F. LEE  
 william.lee@wilmerhale.com  
 WILMER CUTLER PICKERING  
 HALE AND DORR LLP  
 60 State Street  
 Boston, MA 02109  
 Telephone: (617) 526-6000  
 Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)  
 mark.selwyn@wilmerhale.com  
 WILMER CUTLER PICKERING  
 HALE AND DORR LLP  
 950 Page Mill Road  
 Palo Alto, California 94304  
 Telephone: (650) 858-6000  
 Facsimile: (650) 858-6100

11 Attorneys for Plaintiff and  
 12 Counterclaim-Defendant APPLE INC

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

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

Case No. 11-cv-01846-LHK

**APPLE’S OPPOSITION TO  
 SAMSUNG’S BRIEF REGARDING  
 REFERENCES AT TRIAL TO  
 “PLAINTIFF” AND “DEFENDANT”**

**Trial: July 30, 2012**  
**Time: 9:00 a.m.**  
**Place: Courtroom 8, 4<sup>th</sup> Floor**  
**JUDGE: HON. LUCY H. KOH**

1           The Court has offered Samsung the opportunity to bifurcate its case—to be a plaintiff  
2 asserting patents in a separate case against Apple. Samsung turned the option down. (7/24/2012  
3 Hr’g Tr. at 43:3-11.) Now Samsung asks the court to treat it like the plaintiff in front of the jury,  
4 referring to the parties as “claimants” and reshuffling counsel tables in the courtroom. Samsung’s  
5 proposal contradicts the Federal Rules of Civil Procedure and may confuse the jury.

6           Apple is the plaintiff in this case, as the caption on Samsung’s brief indicates. By filing a  
7 complaint and summons, Apple became the plaintiff and Samsung the defendant. *See* Fed. R.  
8 Civ. P. 4. By filing its counterclaims in this action, Samsung became a defendant-  
9 counterclaimant. (*See* Dkt. No. 80.) *See also* Fed. R. of Civ. P. 13. If Samsung wishes to be  
10 called something else, it should have tried its affirmative case separately.

11           Samsung’s request to sit near the jury while it bears the burden of proof is unnecessary  
12 and inconvenient. Samsung has indicated that it intends to follow Apple’s affirmative case with  
13 its own affirmative case, before defending against Apple’s claims. If the trial occurs in this order,  
14 Samsung’s request would result in table-swapping every few days. The Court’s management of  
15 the trial will mitigate any possible prejudice to Samsung, regardless of where the parties’ lawyers  
16 sit.

17           Samsung cites a transcript from one Central District of California case, *Mattel v. MGA*,  
18 Case No. 04-cv-09049 (C.D. Cal. filed Nov. 2, 2004) (Quinn Emanuel representing Mattel), in  
19 which the court apparently allowed the parties to switch tables at the end of the plaintiff’s case.  
20 That trial was considerably longer than this one (Dkt. No. 1398 at 8 (120 hours per side)), and we  
21 have no indication in the transcript fragment Samsung provides as to why the court decided to  
22 allow the parties to switch tables.

23           Samsung’s latest attempt to re-write the Court’s guidelines for this trial should be denied.  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: July 27, 2012

MORRISON & FOERSTER LLP

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

Attorneys for Plaintiff  
APPLE INC.