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CO., LTD., SAMSUNG ELECTRONICS
14 AMERICA, INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC
15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

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

24 Defendants.
25

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S PROFFER OF TESTIMONY
OF SHIN NISHIBORI**

1 Samsung respectfully makes a proffer of evidence regarding Shin Nishibori and his
2 involvement in the creation of the Sony-style model, which he testified changed the course of the
3 iPhone's development. This evidence is not being offered to prove that Apple's design patents
4 are invalid under Section 102 or 103, but to rebut Apple's allegations that Samsung copied designs
5 and design concepts that Apple claims are proprietary and unique to it. Mr. Nishibori's
6 testimony and the documentary evidence, such as the Sony-style CAD files and emails,
7 corroborate Samsung's independent creation story that the design elements found in Samsung's
8 phones were not taken from Apple, but were known to other designers in the field. The Court's
9 order on Apple's MIL #3 explicitly stated that evidence going "to rebut an allegation of copying"
10 is independent from an invalidity theory. (Dkt No. 1267 at 3.) By the same logic, this evidence
11 is relevant to rebutting Apple's allegations of willfulness. This evidence is not being asserted for
12 invalidity purposes, or to allege any kind of wrongdoing by Apple, but to rebut Apple's factual
13 allegations of copying and to put them in their proper context in the industry of electronic device
14 design. The Sony-related evidence is also relevant to issues of functionality, which Samsung has
15 been disclosing since the preliminary injunction phase. The order by Magistrate Judge Grewal
16 striking various prior art references was not directed in any way to the functionality opinions
17 found in Samsung's expert's report. In fact, Mr. Sherman included in his functionality section
18 images of the Sony-Style phone model, along with text from the email revealing that Apple
19 changed its phone design from the earlier extrudo model at least in part due to functional reasons.

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21 DATED: July 30, 2012

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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23 By /s/ Victoria F. Maroulis

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