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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.
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CASE NO. 11-cv-01846-LHK

**SAMSUNG’S PROFFER REGARDING
 DOCUMENTS DEMONSTRATING
 INDEPENDENT CREATION AND THAT
 REBUT ALLEGATIONS OF COPYING**

1 In its Order denying Apple’s Motion *In Limine* No. 3, this Court held that the very
2 documents in Samsung Opening slides 11-19 – images of Samsung’s internal 2006 phone and
3 internal designs contained in trial exhibits 526, 522, and 625 -- are admissible for purposes other
4 than as invalidating prior art under 35 U.S.C. § 102, including to “rebut an allegation of copying.”
5 Dkt. 1267, at 3. The Court should again hold that this very same evidence may be used for
6 purposes of showing lack of copying and lack of willfulness. Samsung has argued since the very
7 beginning of this case that its story showing its independent creation of its own designs is highly
8 relevant to rebut allegations of copying and willfulness. In opposing Apple’s PI Motion,
9 Samsung argued that in December 2006, the month before the iPhone was first announced,
10 Samsung filed a design patent application in Korea for a phone with the same type of design
11 features Apple asserts here. See Dkt. 172, ¶ 103; TX 1086. Samsung discussed the design of
12 the F700 in its PI Opposition as evidence of Samsung’s independent creation. Dkt. 181a, at 4.
13 Additional images of the F700 and Samsung’s related internal models for that design were timely
14 produced to Apple on February 3, 2012, and Apple deposed the F700’s principal designer,
15 Hyoung Shin Park, on February 29, 2012. Apple questioned Ms. Park at length about the
16 development of the F700 design, including the time period in which F700 was developed, the
17 nature of the project, the inspiration for the phone designs, and the additional designs that were
18 created during the project. As this Court has recognized, Samsung’s evidence is relevant to
19 establish independent creation and to rebut allegations of copying: purposes that are separate
20 from any non-infringement theory.¹ Samsung opening Slides 11-19 are only offered for purposes
21 of proving its long-disclosed theories of independent creation, lack of copying and lack of
22 willfulness, and not for section 102 invalidity.

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¹ See, e.g., *Goodyear Tire v. Hercules Tire*, 162 F.3d 1113, 1121 (Fed. Cir. 1998) (“Although Hercules does not deny that it intended to appropriate the general appearance of the Goodyear tire, Hercules argues that it made changes sufficient to avoid infringement. The district court agreed.”).

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