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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.  
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Case No. 11-cv-01846-LHK (PSG)

**APPLE'S RESPONSE TO SAMSUNG'S  
 MOTION FOR RECONSIDERATION  
 RE OPENING STATEMENT SLIDES  
 20-22**

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1 Samsung's "proffer" does not set forth the evidence it intends to introduce, other than as  
2 "Mr. Nishibori's testimony and the documentary evidence, such as the Sony-style CAD files and  
3 emails." Absent a proper proffer, Samsung's renewed motion for reconsideration should be  
4 rejected.

5 Samsung instead argues theories for the admissibility of this evidence that have already  
6 been rejected. First, Samsung argues the evidence is relevant to show "the design elements" in  
7 Apple's phones "were known to other designers in the field," or that the intellectual property  
8 Samsung is accused of infringing was not "proprietary and unique to" Apple. This is an  
9 obviousness theory, which Judge Grewal has stricken.

10 Second, Samsung argues that this evidence "corroborate[s] Samsung's independent  
11 creation story," "rebut[s] an allegation of copying," and "rebut[s] Apple's allegation of  
12 willfulness." This is three ways of arguing the same point, and it is a logical impossibility.  
13 Evidence of how *Apple* came up with *its* iPhone designs (which is what Samsung claims this  
14 evidence shows) is not probative of how *Samsung* came up with its designs for the accused  
15 products. Because the evidence relating to Mr. Nishibori's work is not relevant for this purpose  
16 and is, under Judge Grewal's order, not relevant to prove invalidity, Apple has moved to exclude  
17 it as irrelevant and inadmissible under Rule 403.

18 Should the Court decide to admit any evidence relating to Sony-style design and its  
19 purported influence on Apple's development of the iPhone, Apple respectfully requests that the  
20 Court include the following limiting instruction: "You have heard evidence [or "statements from  
21 counsel"] that during the development of the iPhone an Apple designer expressed the opinion that  
22 a 'Sony-style' design had certain advantages. I am instructing you that you may not consider this  
23 as evidence that Apple's designs for the iPhone were not new and original, or that they came from  
24 outside of Apple."

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Dated: July 30, 2012

MORRISON & FOERSTER LLP

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

Attorneys for Plaintiff  
APPLE INC.