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 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.
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CASE NO. 11-cv-01846-LHK

**SAMSUNG’S PROFFER REGARDING
 EXHIBIT 628 (FILE WRAPPER FOR
 APPLE’S U.S.P.T.O. TRADEMARK
 APPLICATION ON THE HOME
 BUTTON)**

1 Exhibit 628 is the file wrapper for Apple’s application to the USPTO for a registered
2 trademark on its purportedly iconic home button. The document is a public filing by Apple at
3 odds with its experts’ statements, reports, and surveys, which were not disclosed until the expert
4 discovery period after fact discovery had already closed. In the report of Apple expert Russell
5 Winer, Mr. Winer relied on articles, which Apple produced only after fact discovery, that did not
6 exclude the home button from Apple’s alleged trade dress, even though Mr. Winer had defined it
7 to exclude that element. (Expert Report of Russell Winer at ¶¶ 16, 18.) Samsung relies on
8 Exhibit 628 to show that the articles relied upon by Mr. Winer do not support his conclusions that
9 the alleged trade dress was recognized or famous without the home button in light of Apple’s own
10 statements that the button is such a “prominent” and “recognizable” part of Apple’s design, and
11 Samsung cross-examined Mr. Winer with Exhibit 628 at his April 27, 2012 deposition. (April 27,
12 2012 deposition of Russell Winer at 325-347.) The document was also earlier used in the
13 deposition of Apple’s design expert, Peter Bressler, on April 23, 2012. (April 23, 2012 deposition
14 of Peter Bressler at 236-256.) In support of its argument Samsung relies on Exhibit 628 because
15 it contains admissions by Apple that the home button is prominent, iconic, and instantly
16 recognizable, and serves a significant source-identifying function on Apple products, including the
17 iPad.

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19 DATED: July 30, 2012

QUINN EMANUEL URQUHART &
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