

EXHIBIT D

**SUBJECT TO PROTECTIVE ORDER; CONTAINS HIGHLY CONFIDENTIAL –
OUTSIDE ATTORNEY’S EYES ONLY INFORMATION**

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11 Attorneys for Plaintiff and
12 Counterclaim-Defendant APPLE INC.

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

18 APPLE INC., a California corporation,

19 Plaintiff,

20 v.

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

24 Defendants.
25

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

**APPLE INC.’S CORRECTED
AMENDED OBJECTIONS AND
RESPONSES TO SAMSUNG
ELECTRONICS CO. LTD.’S
INTERROGATORY NOS. 4, 6, 7,
16, 17, 18 TO APPLE INC.**

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1 In accordance with Federal Rule of Civil Procedure 33(d), Apple refers to the following
2 documents because the burden of deriving or ascertaining the answer to this Interrogatory from
3 the produced business records is substantially the same for Apple as for Samsung: APLNDC-
4 X0000007220, APLNDC00013715, and APLNDC00013690.

5 **INTERROGATORY NO. 7:**

6 Separately for each of the APPLE PATENTS-IN-SUIT, APPLE TRADE DRESS and
7 APPLE TRADEMARKS state all facts supporting any contention by APPLE that Samsung has
8 willfully infringed, diluted, or falsely designated the origin of its products for each patent, trade
9 dress, and trademark, including when and how APPLE asserts Samsung had actual notice of the
10 APPLE PATENTS-IN-SUIT, APPLE TRADE DRESS, and APPLE TRADEMARKS.

11 **OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 7:**

12 Apple objects to this Interrogatory as overbroad, unduly burdensome, and not reasonably
13 calculated to lead to the discovery of admissible evidence. Apple objects to this Interrogatory as
14 premature to the extent that it: (a) conflicts with the schedule entered by the Court, (b) conflicts
15 with the obligations imposed by the Federal Rules of Civil Procedure, the Civil Local Rules
16 and/or the Patent Local Rules of this Court, and/or any other applicable rule; (c) seeks
17 information that is the subject of expert testimony; (d) seeks information and/or responses that are
18 dependent on the Court’s construction of the asserted claims of the patents-in-suit; or (e) seeks
19 information and/or responses that are dependent on depositions and documents that have not been
20 taken or produced. Apple further objects to this Interrogatory to the extent it seeks information
21 that: (i) requires the disclosure of information, documents, and things protected from disclosure
22 by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense
23 privilege, or any other applicable privilege, doctrine, or immunity; (ii) would require Apple to
24 draw a legal conclusion to respond; (iii) is outside of Apple’s possession, custody, or control; or
25 (iv) can be obtained as easily by Samsung, is already in Samsung’s possession, or is publicly
26 available.

27 Subject to and incorporating its General Objections and its specific objections, Apple
28 responds as follows:

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1 Samsung manufactured, distributed, imported into the United States, used in the United
2 States, offered for sale in the United States, and sold in the United States products that infringed
3 the Apple patents, trade dress, and trademarks at issue in this lawsuit despite an objectively high
4 likelihood that its actions constituted infringement of valid patents, trade dress, and trademarks.
5 Moreover, this objectively high likelihood of infringement was known to Samsung, or so obvious
6 that it should have been known to Samsung. Samsung’s objectively reckless infringement of the
7 Apple patents, trade dress, and trademarks at issue in this lawsuit began before Apple commenced
8 this action and continues to this day. There is no objectively reasonable non-infringement
9 argument with respect to the accused products; nor is there any objectively reasonable argument
10 that the Apple patents, trade dress, and trademarks at issue in this lawsuit are invalid.

11 For instance, starting in July 2010, Apple representatives provided notice to Samsung that
12 it infringed Apple’s patents and designs. On or about August 4, 2010, Apple representatives met
13 with Samsung in Korea and showed a presentation titled “Samsung’s Use of Apple Patents in
14 Smartphones.” This presentation emphasized Samsung’s copying of the iPhone and identified
15 two of the patents-in-suit (the ‘002 and ‘381 patents), giving Samsung actual notice of at least
16 these patents, and many more.

17 On or about August 26, 2010, Apple sent Samsung an electronic archive file containing
18 claim charts further illustrating Samsung’s infringement of Apple patents. A presentation
19 document that accompanied these claim charts identified the ‘002 and ‘381 patents as two patents
20 that Samsung products infringed, and it substantiated these allegations with text from the patents
21 and photographs of Samsung devices illustrating infringing functionality. Apple later presented
22 these slides to Samsung at a meeting in Cupertino, California on or about September 9, 2010.

23 Moreover, even after Samsung indisputably had actual notice of its infringement of all of
24 the Apple patents-in-suit as a result of the filing of this lawsuit, it continued the development,
25 manufacture, importation, distribution and sale of electronic devices as to which there was no
26 objectively reasonable theory of non-infringement. Samsung continues its willful infringing
27 activities to the present.

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1 During the August 4, 2010 presentation mentioned above, Apple also informed Samsung
2 that Samsung’s smart phones were infringing Apple’s designs.

3 Moreover, with respect to the design patents-in-suit, and specifically with respect to
4 D’889, Samsung was aware of this patent at least as early as April 14, 2008 when it was cited
5 during the prosecution of U.S. Design Patents Nos. D578,983 and D583,342, which are assigned
6 to Samsung. The D’889 was also cited during the prosecution of U.S. Design Patents
7 Nos. D632,688 and D635,976. Specifically with respect to the D’790 patent, Samsung was aware
8 of this patent at least as early as February 3, 2011 when it was cited during the prosecution of
9 U.S. Design Patent No. D634,734, which is assigned to Samsung. Specifically with respect to the
10 D’305 patent, Samsung was aware of this patent at least as early as November 27, 2009 when it
11 was cited during the prosecution of U.S. Design Patent No. D618,700, which is assigned to
12 Samsung. Moreover, there is substantial evidence of Samsung’s copying of Apple’s iPhone and
13 iPad products, as shown by the numerous design similarities between Apple’s and Samsung’s
14 phone and tablet products.

15 Furthermore, with respect to the trade dress and trademarks asserted in the lawsuit, Apple
16 announced the original iPhone on January 9, 2007 and released the product on June 29, 2007;
17 Apple announced the iPhone 3G on June 9, 2008 and released the product on July 11, 2008;
18 Apple announced the iPhone 3GS on June 8, 2009 and released the product on June 19, 2009; and
19 Apple announced the iPhone 4 on June 7, 2010 and released the product on June 24, 2010.
20 Samsung was put on notice of Apple’s distinctive Original iPhone Trade Dress, iPhone 3G Trade
21 Dress, iPhone 4 Trade Dress, and iPhone Trade Dress upon the announcements of these
22 respective products. Samsung was put on notice of the trade dress shown in the Trade Dress
23 Registrations upon the announcement of the original iPhone. Samsung was put on notice of the
24 trade dress shown in U.S. Application Serial No. 85/299,118 upon the announcement of the
25 iPhone 4. Apple announced the iPad on January 27, 2010 and released the product on April 3,
26 2010, and Apple announced the iPad 2 on March 2, 2011 and released the product on March 11,
27 2011. Samsung was put on notice of Apple’s distinctive iPad Trade Dress and the trade dress
28 shown in U.S. Application Serial Nos. 77/921,838, 77/921,829, and 77/921,869 upon the

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1 announcement of the iPad, and it was put on notice of Apple’s distinctive iPad 2 Trade Dress
2 upon the announcement of the iPad 2. Samsung was put on notice of the marks shown in U.S.
3 Registration Nos. 3,886,196; 3,889,642; 3,886,200; 3,889,685; and 3,886,169 upon the
4 announcement of the original iPhone. Samsung was put on notice of the mark shown in U.S.
5 Registration No. 3,886,197 at least as early as June 19, 2009. Samsung was put on notice of the
6 Purple iTunes Store Trademark at least as early as June 2008. Samsung was put on notice of the
7 iTunes Eighth Note and CD Design Trademark at least as early as January 9, 2001.

8 In accordance with Federal Rule of Civil Procedure 33(d), Apple refers to the following
9 documents because the burden of deriving or ascertaining the answer to this Interrogatory from
10 the produced business records is substantially the same for Apple as for Samsung:

11 SAMNDCA00036232, SAMNDCA00176053, SAMNDCA00191811, SAMNDCA00196646,
12 SAMNDCA00201351, SAMNDCA00201771, SAMNDCA00202212, SAMNDCA00202336,
13 SAMNDCA00203016, SAMNDCA00203092, SAMNDCA00203268, SAMNDCA00203727,
14 SAMNDCA00203811, SAMNDCA00203880, SAMNDCA00214274, SAMNDCA00217372,
15 SAMNDCA00221705, SAMNDCA00228887, SAMNDCA00228934, SAMNDCA00228981,
16 SAMNDCA00229011, SAMNDCA00229396, SAMNDCA00229399, SAMNDCA00229410,
17 SAMNDCA00229440, SAMNDCA00229449, SAMNDCA00232190, SAMNDCA00237929,
18 SAMNDCA00237976, SAMNDCA00238251, SAMNDCA00238432, SAMNDCA00249029,
19 SAMNDCA00251506, SAMNDCA00507826, SAMNDCA00508318, SAMNDCA00512454,
20 SAMNDCA00514511, SAMNDCA00514571, SAMNDCA00515899, SAMNDCA00525347,
21 SAMNDCA00530675, SAMNDCA00533129, SAMNDCA00533366, SAMNDCA10042955,
22 SAMNDCA10154003, SAMNDCA10190890, SAMNDCA10244357, SAMNDCA10244604,
23 SAMNDCA10247373, SAMNDCA10247537, SAMNDCA10247549, SAMNDCA10275576,
24 SAMNDCA10403697, SAMNDCA10524415, SAMNDCA10806650, SAMNDCA10806707,
25 SAMNDCA10807316, SAMNDCA10807388, SAMNDCA10808682, SAMNDCA10809390,
26 SAMNDCA10809734, SAMNDCA10824971, all documents referenced in Apple’s briefing on
27 its motion for sanctions, all documents that Samsung has produced, and continues to produce,
28

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1 evidencing comparisons, analyses, studies, teardowns, and investigations of Apple products, and
2 other documents produced late by Samsung that Apple is still in the process of reviewing.

3 **INTERROGATORY NO. 16:**

4 IDENTIFY all facts RELATING TO studies, including formal or informal analysis,
5 investigation, surveys, focus groups, consumer research, or other information or reports that relate
6 to, support, or refute YOUR claims in this action, including, for each such study, when it was
7 commissioned, conducted, and completed, by whom it was conducted, and its conclusions.

8 **OBJECTIONS AND RESPONSE TO INTERROGATORY NO. 16:**

9 Apple objects to the phrases “all facts RELATING TO studies” and “formal or informal
10 analysis” as vague and ambiguous. Apple objects to this Interrogatory as overbroad, unduly
11 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,
12 especially because it requests the identification of “all facts RELATING TO . . . analysis,
13 investigation . . . or other information or reports that relate to . . . YOUR claims.” Apple objects
14 to this Interrogatory as premature to the extent that it: (a) conflicts with the schedule entered by
15 the Court, (b) conflicts with the obligations imposed by the Federal Rules of Civil Procedure, the
16 Civil Local Rules, and/or any other applicable rule; (c) seeks information that is the subject of
17 expert testimony; or (d) seeks information and/or responses that are dependent on depositions and
18 documents that have not been taken or produced. Apple objects to this Interrogatory to the extent
19 it seeks information that: (i) requires the disclosure of information, documents, and things
20 protected from disclosure by the attorney-client privilege, work product doctrine, common
21 interest doctrine, joint defense privilege, or any other applicable privilege, doctrine, or immunity;
22 (ii) is outside of Apple’s possession, custody, or control; or (iii) can be obtained as easily by
23 Samsung, is already in Samsung’s possession, or is publicly available.

24 Subject to and incorporating its General Objections and its specific objections, in
25 accordance with Federal Rule of Civil Procedure 33(d), Apple refers to the following documents
26 because the burden of deriving or ascertaining the answer to this Interrogatory from the produced
27 business records is substantially the same for Apple as for Samsung: Market and consumer
28 studies produced by Apple, including APLNDC-X0000313770-314368; APLNDC-

