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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.  
 24

Case No. 11-cv-01846-LHK

**APPLE INC.'S OBJECTIONS AND  
 RESPONSES TO OBJECTIONS  
 REGARDING PROPOSED  
 EXAMINATION MATERIALS FOR  
 BORIS TEKSLER**

**Trial: August 10, 2012**  
**Time: 9:00 a.m.**  
**Place: Courtroom 1, 5<sup>th</sup> Floor**  
**Judge: Hon. Lucy H. Koh**

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1 **I. APPLE’S OBJECTIONS TO SAMSUNG’S PROPOSED CROSS-EXAMINATION**  
2 **MATERIALS FOR BORIS TEKSLER**

3 **A. PX51/DX586 (same document)**

4 PX51 is a settlement proposal Apple made to Samsung in October 2010, two months after  
5 Judge Grewal found that Apple provided “Samsung with a comprehensive summary of its  
6 specific patent infringement claims against specific Samsung products,” and over a month after  
7 Samsung concluded “*there is a reasonable likelihood of future patent litigation between*  
8 *Samsung and Apple unless a business resolution can be reached.*” (Dkt. No. 1321 at 16  
9 (emphasis in original).) As explained below, PX51 is inadmissible under Federal Rules of  
10 Evidence 408 and 403. Apple withdraws PX51 from its own exhibit list.

11 **1. Objection 1: FRE 408**

12 PX51 is inadmissible under Federal Rule of Evidence 408. PX51 states it was provided  
13 for “Business Settlement Purposes Only,” and provided under “Rule 408 of Federal Rules of  
14 Evidence, Without Prejudice.” It refers to specific payment amounts and terms for a proposed  
15 settlement. (PX51 at 12-13, 15-18.) The jury may improperly use PX51 as evidence of the  
16 existence of liability or the amount of damages, which is precisely what Rule 408 prohibits. *See,*  
17 *e.g., Cornell University v. Hewlett-Packard Co.*, 2008 WL 2223122, \*1 (N.D.N.Y. 2008)  
18 (excluding evidence of patentee’s license offers to Hewlett-Packard and Intel under Rules 408  
19 and 402) (Federal Circuit Judge Rader, sitting by designation). Moreover, unlike with PX52  
20 (discussed below), which Apple offers to establish when it gave notice to Samsung of Apple’s  
21 infringement claims, Samsung cannot identify any proper justification for admitting PX51.

22 **2. Objection 2: FRE 403**

23 For these same reasons, PX51 is also inadmissible under Federal Rule of Evidence 403,  
24 because its “probative value is substantially outweighed by a danger of one or more of the  
25 following: unfair prejudice, confusing the issues, [and] misleading the jury . . .” *See, e.g.,*  
26 *LadaTech, LLC v. Illumina, Inc.*, 2012 WL 1188266, \*1 (D. Del., 2012) (excluding failed license  
27 negotiations under Rule 403).  
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1 **II. SAMSUNG'S OBJECTIONS TO APPLE'S PROPOSED DIRECT-**  
2 **EXAMINATION MATERIALS FOR BORIS TEKSLER**

3 **A. Testimony from Boris Teksler Concerning the August 4, 2010 Meeting**  
4 **between Apple and Samsung**

5 Apple does not intend to elicit testimony from Mr. Teksler as to anything that was said at  
6 the August 4, 2010 meeting between Apple and Samsung, beyond the fact that at that meeting  
7 Apple presented PX52, a PowerPoint presentation giving Samsung notice of its infringement of  
8 Apple patents and trade dress. Mr. Teksler has personal knowledge of this: he helped prepare  
9 PX52 in anticipation of the meeting, and he participated in subsequent meetings with Samsung in  
10 which the parties cross-referenced the earlier presentation of PX52. Samsung is free to cross-  
11 examine Mr. Teksler as to the limits of his personal knowledge, but this goes to the weight of the  
12 evidence, not its admissibility.

13 **1. Objection 1: FRE 602**

14 As noted above, Apple will only inquire into matters within Mr. Teksler's personal  
15 knowledge. Samsung's Rule 602 objection is thus unfounded.

16 **2. Objection 2: FRE 802**

17 As noted above, Apple will not inquire into anything that was said at the August 4, 2010  
18 meeting, beyond the fact that PX52 was presented—a fact that is within Mr. Teksler's personal  
19 knowledge based on his preparation of PX52 and his participation in subsequent discussions with  
20 Samsung personnel in which PX52 was discussed.

21 **B. PX52**

22 **1. Objections 1 and 2: FRE 602 and 802**

23 Samsung's Rule 602 and Rule 802 objections to PX52 fail for the same reasons set out  
24 above. Mr. Teksler helped create PX52 and has personal knowledge, based on discussions with  
25 Samsung personnel, that it was delivered to Samsung. Further, the presentation is relevant,  
26 among other reasons, for the non-hearsay purpose of establishing that Apple put Samsung on  
27 notice of Apple's patent infringement, trade dress, and copying claims no later than August 4,  
28 2010.

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Dated: August 8, 2012

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