

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
 Charles K. Verhoeven (Cal. Bar No. 170151)  
 2 charlesverhoeven@quinnemanuel.com  
 50 California Street, 22<sup>nd</sup> Floor  
 3 San Francisco, California 94111  
 Telephone: (415) 875-6600  
 4 Facsimile: (415) 875-6700

5 Kevin P.B. Johnson (Cal. Bar No. 177129)  
 kevinjohnson@quinnemanuel.com  
 6 Victoria F. Maroulis (Cal. Bar No. 202603)  
 victoriamaroulis@quinnemanuel.com  
 7 555 Twin Dolphin Drive 5<sup>th</sup> Floor  
 Redwood Shores, California 94065  
 8 Telephone: (650) 801-5000  
 Facsimile: (650) 801-5100

9 Michael T. Zeller (Cal. Bar No. 196417)  
 10 michaelzeller@quinnemanuel.com  
 865 S. Figueroa St., 10th Floor  
 11 Los Angeles, California 90017  
 Telephone: (213) 443-3000  
 12 Facsimile: (213) 443-3100

13 Attorneys for SAMSUNG ELECTRONICS  
 CO., LTD., SAMSUNG ELECTRONICS  
 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,

CASE NO. 11-cv-01846-LHK

19 Plaintiff,

**SAMSUNG’S OBJECTIONS AND  
 RESPONSES REGARDING EXHIBITS  
 TO BE USED WITH BORIS TEKSLER**

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.  
 25

1 Samsung hereby submits objections to Apple's direct examination exhibits for Boris  
2 Teksler and responses to Apple's objections regarding cross examination exhibits for Mr. Teksler.

3 **I. BORIS TEKSLER**

4 **A. Samsung's Objections to Direct Examination Topics and Exhibits**

5 **1. Samsung's Objection to Testimony About the August 4, 2010 Meeting**  
6 **Between Apple and Samsung**

7 Apple proffers Mr. Teksler to testify regarding the August 4, 2010 meeting in order to  
8 provide alleged evidence of “the beginning of the Apple-Samsung dispute, including when  
9 Samsung was given notice of Apple’s patents and trade dress.” However, Mr. Teksler testified  
10 repeatedly in deposition that he was not [REDACTED]

11 [REDACTED] See, e.g., Hutnyan Decl., Ex. A (Teksler Depo., dated March 16, 2012 at  
12 11:6-8 [REDACTED]

13 [REDACTED] Because he was not [REDACTED] Mr. Teksler testified that  
14 he could not [REDACTED]

15 [REDACTED] Hutnyan Decl., Ex. A (Teksler Depo.,  
16 dated March 16, 2012 at 13:2-10 [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 [REDACTED] Under *FRE* 602 and *FRE* 802,  
22 he should not be allowed to testify to the jury about either what was said *or shown* to Samsung at  
23 this meeting.

24 While Mr. Teksler previously testified regarding [REDACTED]  
25 [REDACTED] when he was designated as Apple’s 30(b)(6) deponent, Apple’s designation of Mr. Teksler  
26 as a 30(b)(6) deponent does not allow him to testify regarding events of which he has no personal  
27 knowledge. Samsung, as the adverse party, may offer Mr. Teksler's testimony in his capacity as a  
28

1 corporate designee, but Apple cannot. *Union Pump Co. v. Centrifugal Technology, Inc.*, 404 F.  
2 App’x 899, 907-908 (5<sup>th</sup> Cir. 2010). As the Fifth Circuit explained in *Union Pump*:

3 [FRE 602] limits the scope of a witness's testimony to matters that are within his or  
4 her personal knowledge. Union Pump argues that Bixler was permitted to testify to  
5 matters that, although they were not within his own personal knowledge, were  
6 within the knowledge of the corporation because Bixler was designated as Union  
7 Pump's corporate representative. We disagree. [FRCP] 30(b)(6) allows corporate  
8 representatives to testify to matters within the corporation's knowledge during  
9 deposition, and Rule 32(a)(3) permits an *adverse* party to use that deposition  
10 testimony during trial. . . . However, a corporate representative may not testify to  
11 matters outside his own personal knowledge “**to the extent that information [ is]  
12 hearsay not falling within one of the authorized exceptions.**”

13 *Id.* (citations omitted) (emphasis in original); *see also Cincinnati Insurance Co. v. Gray*, 2010  
14 WL 3522954 \*7 (S.D. Ind.) (“hearsay is not admissible at **trial** just because it was provided by a  
15 witness speaking for the company at a Rule 30(b)(6) deposition”) (emphasis in original).

## 16 **2. Samsung's Objection to PX-52**

17 PX-52 is the PowerPoint presentation that Apple prepared for the August 4 meeting. Mr.  
18 Teksler has no personal knowledge relating the only non-hearsay purpose for which PX-52 is  
19 proffered—Samsung’s notice of Apple’s infringement allegations. Indeed, Mr. Teksler has no  
20 personal knowledge of what slides were, or were not, shown at the meeting or what was said in  
21 connection with whichever slides were shown. Without admissible testimony establishing that  
22 each slide was shown to Samsung – testimony Mr. Teksler cannot give -- Apple cannot establish  
23 that the presentation put Samsung on notice of the alleged infringement. Because notice is the  
24 only possible nonhearsay purpose for PX-52, it is inadmissible hearsay under *FRE* 802. Mr.  
25 Teksler should also be prohibited from testifying about the presentation PX-52 by *FRE* 602.

## 26 **B. Samsung's Responses to Cross Examination Exhibits**

27 While seeking to introduce PX-52, a pre-litigation Apple presentation bearing a legend  
28 stating that it is protected under *FRE* 408, Apple seeks to exclude PX-51, its own exhibit and  
another of its own pre-litigation presentations. There is no basis for introducing one of these  
presentations to support Apple's affirmative case, while excluding the other, which Apple has  
suddenly decided is unfavorable.

1 Apple objects to this exhibit pursuant to *FRE* 408, which prohibits the introduction of  
2 evidence for the purpose of proving or disproving the amount of a “disputed claim.” Apple’s  
3 objection fails for two reasons.

4 First, there was no litigation then and thus no disputed claim. *See, e.g., SanDisk Corp. v.*  
5 *STMicroelectronics, Inc.*, 480 F.3d 1372, 1375 n.1 (holding that the patentee’s “presentation was  
6 made outside the context of litigation, and there is nothing on the record to indicate that it could be  
7 properly considered an ‘offer’ to settle a claim which was then in dispute”); *Ecrix Corp. v.*  
8 *Exabyte Corp.*, 191 F.R.D. 611, 615 (D. Colo. 2000) (noting that “evidence of negotiations  
9 entered into before a patent infringement claim was filed was admissible but evidence of  
10 negotiations after the claim was filed was inadmissible”). Indeed, in opposing Samsung’s motion  
11 regarding spoliation, Apple asserts that only after Spring 2011 could it anticipate that there would  
12 be litigation between the parties. Dkt. 1591 at 9-10.

13 Apple’s objection should also be overruled because under *FRE* 408 evidence regarding  
14 offers or conduct during compromise negotiation of a disputed claim can be admitted purposes  
15 other than proving the validity or amount of the claim. Samsung will introduce PX-51 to refute  
16 Apple’s contention that it gave Samsung notice of Apple’s design patents. This is a well-  
17 recognized exception to *FRE* 408. *FRE* 408, Advisory Notes (“The amendment does not affect  
18 the case law providing that Rule 408 is inapplicable when evidence of the compromise is offered  
19 to prove notice.”) Accordingly, at a minimum, PX-51 is admissible for this purpose. Apple’s  
20 objection to PX-51 pursuant to *FRE* 403 should likewise be rejected. As *FRE* 408 specifically  
21 permits the introduction of settlement negotiations for purposes other than those excluded by the  
22 rule, the mere fact that the exhibit includes information about settlement discussions is not  
23 grounds for exclusion.

24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: August 8, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Victoria F. Maroulis  
Victoria F. Maroulis  
Attorneys for SAMSUNG ELECTRONICS  
CO., LTD., SAMSUNG ELECTRONICS  
AMERICA, INC., and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC