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 AMERICA, INC. and SAMSUNG  
 TELECOMMUNICATIONS AMERICA,  
 LLC

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.

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

**JOINT STIPULATION AND  
~~PROPOSED~~ ORDER  
 DISMISSING CLAIMS  
 WITHOUT PREJUDICE**

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Counterclaim-Defendant APPLE INC.

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2 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the Court's May 10, 2012  
3 Order Regarding Parties' Statements Narrowing Claims to be Asserted at Trial (Dkt. No. 912),  
4 and the Court's directive during the June 29, 2012 Case Management Conference to further  
5 streamline and simplify the issues in this case, the parties, through their respective counsel of  
6 record, hereby stipulate and agree as set forth below. This statement reflects case narrowing that  
7 took place prior to trial.

8 WHEREAS, Apple Inc. ("Apple") commenced the above-captioned action (the  
9 "Litigation") against Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and  
10 Samsung Telecommunications America, LLC (collectively "Samsung," and together with Apple,  
11 "the Parties" and individually each a "Party") on April 15, 2011;

12 WHEREAS, pursuant to the Court's May 2, 2012 Case Management Order, a trial in this  
13 action commenced on July 30, 2012 (Dkt. No. 901);

14 WHEREAS, both parties have previously represented to each other and to the Court that  
15 each is willing to dismiss certain claims and counterclaims in the interests of streamlining and  
16 simplifying the issues in this case (Dkt. Nos. 893, 902, 1178, 1277);

17 WHEREAS, both parties previously submitted a Joint Stipulation and Proposed Order  
18 Dismissing Claims Without Prejudice, which was entered by the Court on May 29, 2012 (Dkt.  
19 No. 981); and

20 WHEREAS, both parties previously submitted a Joint Stipulation and Proposed Order  
21 Dismissing Claims Concerning D617,334 Without Prejudice, which was entered by the Court on  
22 June 21, 2012 (Dkt. 1116).

23 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties as  
24 follows:

25 1. This Stipulation and Order dismisses without prejudice any claims by Apple  
26 against Samsung for infringement of Claim 8 of U.S. Patent No. 7,663,607 (Tenth Claim for  
27 Relief).

28 2. This Stipulation and Order dismisses without prejudice any claims by Apple  
against Samsung for infringement or dilution by the original Galaxy Tab 7.0 of Apple's

1  
2 unregistered iPad/iPad 2 trade dress (First and Fourth Claims for Relief). This Stipulation and  
3 Order does not dismiss Apple's claims against the Galaxy Tab 7.0 for infringement of Apple's  
4 utility patents.

5 3. This Stipulation and Order dismisses without prejudice any claims by Apple  
6 against Samsung's Acclaim, Nexus S, and Sidekick devices and any claims against the ThinkFree  
7 Office application relating to Apple's claims of infringement of the '381 Patent.

8 4. Samsung agrees that its corresponding counterclaims seeking declaratory  
9 judgment of non-infringement and invalidity for Apple's dismissed claims for infringement of the  
10 '607 Patent should be dismissed without prejudice. Samsung further agrees that its corresponding  
11 counterclaims of non-infringement against the Acclaim, Nexus S, and Sidekick devices and the  
12 ThinkFree Office application should be dismissed without prejudice. This stipulation of dismissal  
13 without prejudice is made subject to Samsung's reservation of rights to reassert these or other  
14 counterclaims and defenses relating to Apple's dismissed claims should any such dismissed claim  
15 be revived or reasserted by Apple for any reason.

16 5. This Stipulation and Order dismisses without prejudice any claims by Samsung  
17 against Apple for infringement of:

- 18 a. Claim 11 of U.S. Patent No. 7,675,941;
- 19 b. Claim 17 of U.S. Patent No. 7,447,516;
- 20 c. Claim 10 of U.S. Patent No. 7,698,711;
- 21 d. Claim 12 of U.S. Patent No. 7,546,893; and
- 22 e. All remaining claims of U.S. Patent No. 6,928,604.

23 6. Apple agrees that its corresponding counterclaims seeking declaratory judgment of  
24 non-infringement and invalidity for Samsung's dismissed claims for infringement of claim 11 of  
25 the '941 Patent, claim 17 of the '516 Patent, claim 10 of the '711 Patent, claim 12 of the '893  
26 Patent, and all remaining claims of the '604 Patent should be dismissed without prejudice. Apple  
27 further agrees that its corresponding counterclaims for Breach of Contract – FRAND and Other  
28 Standard-Related Misconduct (Twenty-Fifth Counterclaim), Declaratory Judgment that Apple is  
Licensed to Samsung's Declared Essential Patents (Twenty-Seventh Counterclaim), violation of

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2 Section 2 of the Sherman Antitrust Act (Twenty-Eighth Counterclaim), and Unfair Competition  
3 Under Cal. Bus. & Prof. Code §17200, et seq. (Twenty-Ninth Counterclaim) as they relate to  
4 claim 11 of the '941 Patent, claim 17 of the '516 Patent, and all remaining claims of the '604  
5 Patent should be dismissed without prejudice. This stipulation of dismissal without prejudice is  
6 made subject to Apple's reservation of rights to reassert these or other counterclaims and defenses  
7 relating to Samsung's dismissed claims should any such dismissed claim be revived or reasserted  
8 by Samsung for any reason.

9         7. Apple agrees that its counterclaims seeking Breach of Contract – FRAND and  
10 Other Standard-Related Misconduct (Twenty-Fifth Counterclaim), Declaratory Judgment that  
11 Apple is Licensed to Samsung's Declared Essential Patents (Twenty-Seventh Counterclaim),  
12 violation of Section 2 of the Sherman Antitrust Act (Twenty-Eighth Counterclaim) and Unfair  
13 Competition Under Cal. Bus. & Prof. Code §17200, et seq. (Twenty-Ninth Counterclaim) for the  
14 Samsung claims dismissed in the May 29 Joint Stipulation and Order should be dismissed without  
15 prejudice. This stipulation of dismissal without prejudice is made subject to Apple's reservation  
16 of rights to reassert these or other counterclaims and defenses relating to Samsung's dismissed  
17 claims should any such dismissed claim be revived or reasserted by Samsung for any reason.

18         8. Due to the Court's granting summary adjudication of non-infringement with  
19 respect to Samsung's U.S. Patent No. 7,362,867 ("867 patent") (Dkt. No. 1185), Apple agrees  
20 that its counterclaims seeking declaratory judgment of invalidity (Twelfth Counterclaim), Breach  
21 of Contract – FRAND and Other Standard-Related Misconduct (Twenty-Fifth Counterclaim),  
22 Declaratory Judgment that Apple is Licensed to Samsung's Declared Essential Patents (Twenty-  
23 Seventh Counterclaim), violation of Section 2 of the Sherman Antitrust Act (Twenty-Eighth  
24 Counterclaim), and Unfair Competition Under Cal. Bus. & Prof. Code §17200, et seq. (Twenty-  
25 Ninth Counterclaim) for the '867 patent should be dismissed without prejudice. This stipulation  
26 of dismissal without prejudice is made subject to Apple's reservation of rights to reassert these or  
27 other counterclaims and defenses relating to Samsung's dismissed claims should the '867 patent  
28 be revived or reasserted by Samsung for any reason.

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2           9.       This Stipulation and Order is not an adjudication on the merits of any of the claims  
3 or counterclaims that are hereby dismissed without prejudice.  
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7 Dated: August 20, 2012

8 MORRISON & FOERSTER LLP

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9  
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TELECOMMUNICATIONS AMERICA,  
LLC.

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2 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

3  
4 Dated: August 28, 2012

By: \_\_\_\_\_

  
The Honorable Lucy H. Koh  
United States District Judge