

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 Edward DeFranco (Cal. Bar No.165596)  
 10 eddefranco@quinnemanuel.com  
 51 Madison Avenue, 22nd Floor  
 11 New York, New York 10010  
 Telephone: (212) 849-7000  
 12 Facsimile: (212) 849-7100

13 Michael T. Zeller (Cal. Bar No. 196417)  
 michaelzeller@quinnemanuel.com  
 14 865 S. Figueroa St., 10th Floor  
 Los Angeles, California 90017  
 15 Telephone: (213) 443-3000  
 Facsimile: (213) 443-3100

16 Attorneys for Samsung Electronics America, Inc.  
 17 and Samsung Telecommunications America LLC

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

20 APPLE INC., a California corporation,

21 Plaintiff,

22 vs.

23 SAMSUNG ELECTRONICS CO., LTD., a  
 24 Korean business entity; SAMSUNG  
 ELECTRONICS AMERICA, INC., a New  
 25 York corporation; SAMSUNG  
 TELECOMMUNICATIONS AMERICA,  
 26 LLC, a Delaware limited liability company,

27 Defendants.

CASE NO. 4:11-cv-01846-LHK

**SAMSUNG'S OPPOSITION TO  
 PLAINTIFF'S MOTION TO SHORTEN  
 TIME FOR BRIEFING AND HEARING  
 ON PLAINTIFF'S MOTION TO  
 EXPEDITE DISCOVERY**

Date: April 26, 2011  
 Time:  
 Courtroom 4, 5th Floor  
 Judge: Hon. Lucy H. Koh

1 Samsung Electronics America, Inc. (“SEA”) and Samsung Telecommunications America,  
2 LLC (“STA”) (collectively “Samsung”) respectfully submit this Opposition to Plaintiff Apple,  
3 Inc.’s (“Apple”) Motion to Shorten Time for Briefing and Hearing on Plaintiff’s Motion to  
4 Expedite Discovery (D.N. 12) (“Motion to Shorten Time”). No Samsung entity has answered or  
5 otherwise responded to the Complaint. Each Samsung entity makes a limited special appearance  
6 in order to oppose Apple’s Motion to Shorten Time and reserves all jurisdictional objections.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 I. Introduction

9 Before it even served or provided Samsung with courtesy copies of its lawsuit, Apple  
10 launched a one-sided campaign to expedite discovery into Samsung’s unreleased Galaxy products.  
11 Not only does Apple wish to deprive Samsung of the common discovery safeguards afforded to all  
12 litigants, but it also seeks to cut in half the already short amount of time Samsung has to defeat  
13 Apple’s attempts to gain this early discovery. The Court should deny Apple’s Motion to Shorten  
14 Time. The prejudice Apple alleges it might suffer if the Court does not shorten time on its Motion  
15 to Expedite Discovery (D.N. 10) is highly questionable, and of Apple’s own making. By contrast,  
16 Samsung will suffer real and substantial prejudice if Apple’s Motion to Shorten Time is granted,  
17 because it would be deprived of a meaningful opportunity to oppose Apple’s Motion to Expedite  
18 Discovery. The Court should not allow Samsung to suffer such prejudice, especially where the  
19 discovery Apple requests would result in Apple’s sneak peek into its competitor’s new products.  
20 Furthermore, Apple’s motion is procedurally improper under this Court’s Local Rules because  
21 Apple failed to deliver the motion on the day Apple filed it and because Apple failed to meet and  
22 confer with Samsung prior to filing.

23 II. Argument

24 A. Apple Does Not Sufficiently Articulate the Need for the Shortened Schedule.

25 Civil Local Rule 6-3(a)(3) expressly requires that Apple identify “the substantial harm or  
26 prejudice that would occur if the Court did not change the time.” Apple fails to make such a  
27 showing. The alleged urgency underlying Apple’s Motion to Shorten Time is highly questionable.  
28 Apple claims it will suffer imminent harm if Samsung’s Galaxy products are introduced into the

1 U.S. market. (Mot. to Shorten Time (D.N. 12) at 1.) Apple’s belief that these products are about  
2 to be introduced into the U.S. market is based upon various “[p]ress accounts.” (Id., citing Bartlett  
3 Shorten Decl. (D.N. 13) at ¶ 5, citing Bartlett Expedite Decl. (D.N. 11) at Exs. 1-2 and 4-8.) Most  
4 of those press accounts issued from mid-February to early March of this year. (Bartlett Expedite  
5 Decl. (D.N. 11) at Exs. 1-2 and 4-8.) Yet Apple did not file its complaint in this action until April  
6 15, 2011. (See D.N. 1.) If Apple were concerned about “imminent harm,” it would have filed its  
7 complaint months earlier, when these initial press accounts issued. Or it would have filed a  
8 motion for a preliminary injunction, or a temporary restraining order. But Apple did none of these  
9 things. Instead, Apple delayed filing its complaint for weeks, and now asks this Court to shorten  
10 the period during which *Samsung* may prepare an opposition to Apple’s Motion to Expedite  
11 Discovery – which seeks extensive, invasive, and unwarranted discovery into Samsung’s  
12 unreleased products. (Mot. to Expedite Disc. (D.N. 10) at 13.) This Court should not allow Apple  
13 to create “imminent harm” to itself by delaying the filing of its complaint, and then rely on that  
14 prejudice to require Samsung less time to oppose that discovery than the Local Rules would  
15 otherwise allow.

16 Nor does Apple argue – because it cannot – that there is a risk the requested information  
17 will disappear before the normal course of discovery, and before Samsung has a full and fair  
18 opportunity to be heard on its objections to the substance of the requested discovery. Wangson  
19 Biotech. Group, Inc. v. Tan Tan Trading Co., Inc., No. C 08-04212 SBA, 2008 WL 4239155, \*7  
20 (N.D. Cal. Sept. 11, 2008) (“[M]ovants are expected to provide evidence supporting their need,  
21 such as a custodian’s practice of destroying records . . . [or] spoilage or destruction will occur in  
22 the due course of business activities”) (internal citations omitted). In short, Apple’s perceived  
23 urgency does not constitute sufficient grounds to deprive Samsung of the time it needs to properly  
24 object to Apple’s attempt to obtain expedited discovery.

25 B. Samsung Will Be Severely Prejudiced by the Shortened Schedule.

26 Requiring Samsung to respond to Apple’s Motion to Expedite Discovery within the  
27 shortened period Apple seeks would essentially deny Samsung the opportunity to fully present the  
28 prejudice it will suffer. The Court should not deprive Samsung of that opportunity, especially

1 considering what is at stake: no less than Apple’s advance preview of its competitors’ valuable  
2 new Galaxy products. (See Compl. (D.N. 1) at ¶ 4 (alleging that Galaxy mobile phones and  
3 Galaxy Tab computer tablet products compete with Apple’s iPhone and iPad); Mot. to Expedite  
4 Disc. (D.N. 10) at 13 (itemizing Galaxy products (and others) on which Apple seeks discovery).)

5 Further, in order to oppose Apple’s Motion to Expedite Discovery, SEA and STA will  
6 have to coordinate with Korea-based Samsung Electronics Co., Ltd. (“SEC”). SEC has not yet  
7 been served with the complaint in this action or been delivered by Apple a copy of its Motion to  
8 Expedite Discovery. (See Bartlett Expedite Decl. (D.N. 11) at ¶ 13; Certificate of Service (D.N.  
9 14) and Amended Certificate of Service (D.N. 16) (indicating that only Samsung Electronics  
10 America, Inc. and Samsung Telecommunications America, LLC were delivered a copy of Apple’s  
11 motion).) Apple’s failure to serve SEC with its complaint weighs against granting expedited  
12 discovery and shortening the time to respond to Apple’s motion. Qwest Commc’ns Int’l, Inc. v.  
13 WorldQuest Networks, Inc., 213 F.R.D. 418, 420 (D. Colo. 2003) (noting that failure to serve  
14 complaint on defendant weighed against expedited discovery).

15 Moreover, Samsung and its counsel have not had a meaningful opportunity to analyze the  
16 extent of the prejudice they would suffer if subjected to the broad discovery Apple seeks. An  
17 analysis of that prejudice is necessary to oppose Apple’s Motion to Expedite Discovery, since  
18 courts in the Ninth Circuit use the “good cause” standard to determine whether expedited  
19 discovery should be granted. Wangson, 2008 WL 4239155 at \*7. Under that standard, the  
20 moving party is entitled to discovery only where “the need for expedited discovery, in  
21 consideration of the administration of justice, outweighs the prejudice to the responding party.”  
22 Id.

23 Here, Samsung and its counsel have to coordinate a critical competitive business issue  
24 across the Pacific Ocean and eleven time zones with a parent entity that has not yet been served  
25 with the Complaint in order to determine the prejudice Apple’s Motion to Expedite Discovery will  
26 impose upon it. Samsung would be severely prejudiced if required to oppose Apple’s Motion to  
27 Expedite Discovery on a shortened schedule.

1 C. Apple's Motion Violates Civil Local Rules 6-3(a) and 6-3(b).

2 Apple's Motion to Shorten Time also violates the Civil Local Rules, and should be denied  
3 on that basis alone. First, Apple failed to comply with the service provision of the applicable rule.  
4 Civil Local Rule 6-3(b) provides: "A party filing a motion to enlarge or shorten time must *deliver*  
5 a copy of the motion, proposed order and supporting declaration to *all* other parties *on the day the*  
6 *motion is filed.*" (Emphasis added.) This Rule requires that all parties be in actual possession of  
7 the motion on the same day it is filed because the 4-day response period is so brief.<sup>1</sup>

8 Apple admits it did not comply with this rule. While the ECF stamp of the Motion to  
9 Shorten Time indicates that Apple filed the motion on April 19, 2011, the declarations of Apple's  
10 counsel and process server establish that it did not deliver the Motion to Shorten Time to SEA or  
11 STA until April 20. (Decl. of Jason R. Bartlett In Support of Pl.'s Mot. to Expedite Disc.  
12 ("Bartlett Expedite Decl.") (D.N. 11) at ¶ 13; Certificate of Service (D.N. 14); Amended  
13 Certificate of Service (D.N. 16).)

14 Second, Apple admits that it has made no attempt to stipulate with any of the Samsung  
15 entities to its requested time change, as is required by Civil L.R. 6-3(a)(2). Counsel for Apple  
16 states, "Given the urgent nature of Apple's Motion to Expedite Discovery, I have not yet contacted  
17 Samsung about obtaining a stipulation to Apple's Motion to Shorten Time." (Decl. of Jason R.  
18 Bartlett In Support of Pl.'s Mot. to Shorten Time for Briefing and Hearing on Pl.'s Mot. to  
19 Expedite Disc. (D.N. 13) ("Bartlett Shorten Decl.") at ¶ 2.) Apple cites no authority for the  
20 proposition that the alleged urgency of a party's underlying motion relieves it of the requirement

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22 <sup>1</sup> It is significant that Civil Local Rule 6-3(b) uses the word "deliver" rather than "serve."  
23 Civil Local Rule 6-3(b) cross-references to Civil Local Rule 5-5(a)(2) regarding time and methods  
24 for "delivery" of papers. Civil Local Rule 5-5(a)(2), in turn, provides that when a "Local Rule  
25 requires delivery of a pleading or paper," that "delivery" cannot be made by sending the document  
26 to the party by mail. Civil Local Rule 5-5(a)(1) further explains that "delivery" means that the  
27 document was "actually delivered." While Civil Local Rule 5-5(b) requires that papers be  
28 electronically served in cases subject to ECF, Apple did not accomplish electronic service on SEA  
or STA, either. Apple has offered no evidence that the Samsung entities were "ECF Users" on the  
date that Apple filed its Motion to Shorten Time. Thus, Apple was required to deliver a paper  
copy of its Motion to Shorten Time to SEA and STA on the day that it was filed. See General  
Order No. 45 IX.C.2 and Civil L.R. 6-3(b) & 5-5(a)(2).

1 that it seek a stipulation to the time change it wants. Regardless of whether Apple knew whether  
2 Samsung was represented, Apple could have reached out to the parties themselves to seek a  
3 stipulation. It did not.

4 **III. Conclusion**

5 For the foregoing reasons, the Court should DENY Plaintiff's Motion to Shorten Time for  
6 Briefing and Hearing on Plaintiff's Motion to Expedite Discovery (D.N. 12). The Court should  
7 instead ORDER that briefing on Plaintiff's Motion to Expedite Discovery (D.N. 10) shall proceed  
8 along the normal schedule prescribed by the Local Rules.

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11 DATED: April 25, 2011

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

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By /s/ Victoria F. Maroulis

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Charles K. Verhoeven

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Kevin P.B. Johnson

17

Victoria F. Maroulis

18

Edward DeFranco

19

Michael T. Zeller

20

Attorneys for SAMSUNG ELECTRONICS

21

AMERICA, INC., and SAMSUNG

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TELECOMMUNICATIONS AMERICA, LLC

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