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Attorneys for Plaintiff and  
 Counterclaim-Defendant APPLE INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

15 APPLE INC., a California corporation,  
 16  
 Plaintiff,  
 17  
 v.  
 18 SAMSUNG ELECTRONICS CO., LTD., A  
 Korean business entity; SAMSUNG  
 19 ELECTRONICS AMERICA, INC., a New York  
 corporation; SAMSUNG  
 20 TELECOMMUNICATIONS AMERICA, LLC, a  
 Delaware limited liability company,  
 21  
 Defendants.  
 22

Case No. 11-cv-01846-LHK

**APPLE'S REPLY IN SUPPORT  
 OF ITS MOTION FOR  
 ADMINISTRATIVE RELIEF TO  
 EXCEED PAGE LIMIT**

1 Samsung's opposition confirms the appropriateness of allowing Apple a 15-page  
2 extension for its reply papers in support of its preliminary injunction motion – and not merely 10  
3 pages (to which Samsung has already agreed) or no pages (which Samsung requests in its  
4 proposed order).

5 In its opposition to Apple's motion for a page limit extension, Samsung does not dispute  
6 that *Titan Tire Corp. v. Case New Holland, Inc.* alone justifies an extension. Indeed, Samsung  
7 does not even address that decision. In *Titan Tire*, the Federal Circuit explained that:

8 If a patentee moves for a preliminary injunction and the alleged  
9 infringer does not challenge validity, the very existence of the  
10 patent with its concomitant presumption of validity satisfies the  
11 patentee's burden of showing a likelihood of success on the  
12 validity issue.

13 566 F.3d 1372, 1377 (Fed. Cir. 2009). For this reason, Apple did not need to address the issue of  
14 design patent validity at all in its opening papers.

15 *Titan Tire* further explains that:

16 If, instead, the alleged infringer responds to the preliminary  
17 injunction motion by launching an attack on the validity of the  
18 patent, the burden is on the challenger to come forward with  
19 evidence of invalidity, just as it would be at trial. The patentee, to  
20 avoid a conclusion that it is unable to show a likelihood of success,  
21 then has the burden of responding with contrary evidence, which  
22 of course may include analysis and argument.

23 *Id.* In its opposition brief, Samsung raised numerous, varied invalidity arguments – including  
24 arguments relating to alleged functionality. Samsung did so in the hopes that the sheer number of  
25 arguments would persuade the Court that a substantial question exists as to the validity of Apple's  
26 design patents. Under *Titan Tire*, Apple is entitled to (and in fact, must) address Samsung's  
27 arguments for the first time on reply, and in detail. The rebuttal on invalidity issues will be a  
28 central part of Apple's reply brief.

29 Rather than address the applicability of *Titan Tire*, Samsung re-raises a bizarre argument  
30 that Apple allegedly manipulated photographs in its preliminary injunction papers to mislead this  
31 Court. It is unfortunate that Apple must address this allegation in connection with a page limit  
32 request, of all things. It should be sufficient to note that, in addressing similar allegations by

1 Samsung of photo manipulation in Germany, the Regional Court in Düsseldorf rejected them as  
2 “irrelevant” and “non-prejudicial.” (Hung Declaration in Support of Motion for Administrative  
3 Relief to Exceed Page Limit, Ex. A at 21) The German court did so in the context of affirming,  
4 with modification, the entry of a preliminary injunction against Samsung’s Galaxy Tab 10.1.  
5 (Hung Decl. Ex. A at 2.)

6 For the foregoing reasons, Apple respectfully requests leave to file a 30-page Reply brief  
7 in support of its Motion for Preliminary Injunction.

8 Dated: September 30, 2011

MORRISON & FOERSTER LLP

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By: /s/ Richard S.J. Hung  
Richard S.J. Hung

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Attorney for Plaintiff APPLE INC.

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