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 14 AMERICA, INC. and SAMSUNG  
 TELECOMMUNICATIONS AMERICA, LLC  
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16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

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

CASE NO. 11-cv-01846-LHK

**MEMORANDUM IN SUPPORT OF  
 SAMSUNG'S NOTICE OF LODGING OF  
 MATERIALS IN OPPOSITION TO  
 APPLE'S MOTION FOR PRELIMINARY  
 INJUNCTION**

**Date: October 13, 2011**

**Time: 1:30 pm**

**Place: Courtroom 8, 4th Floor**

**Judge: Hon. Lucy H. Koh**

1 Pursuant to the Court’s direction on October 13, 2011, Samsung respectfully submits this  
2 memorandum regarding its lodging of supplemental materials on Apple’s motion for a preliminary  
3 injunction. Given the extraordinary remedy Apple seeks and the limited time it allowed Samsung  
4 for discovery, these materials should be considered in the interests of justice and judicial economy.  
5 The supporting Declaration of Mark Tung identifies all of Samsung’s lodged materials.  
6

7 ***Prior Art References.*** After filing its opposition papers, Samsung located additional prior  
8 art that bears on the invalidity of the patents at issue, the appropriate claim construction, and the  
9 proper infringement analysis. This additional prior art was produced to Apple before its reply,  
10 and Apple either did examine or had the opportunity to question deponents about it.

11 *D’889.* Excerpts of the deposition of Roger Fidler and related exhibits depict and explain  
12 additional prior art, including Mr. Fidler’s 1981 and 1997 prior art tablet designs with flat, smooth,  
13 translucent surfaces. Apple deposed Mr. Fidler on September 23, 2011 and had the opportunity  
14 to question him and inspect all of the tablet prior art Samsung seeks to lodge. Samsung also  
15 produced before Apple’s reply the “Bloomberg” prior art, which discloses a transparent and  
16 smooth-front “bezel-less electronic display” (*see e.g.*, US 2004/0041504 A1, esp. Fig. 2 [200]) and  
17 Apple had the opportunity to question Itay Sherman about this prior art during his deposition.  
18

19 *D’677 and D’089.* Prior art evidence reflecting a smart phone design with a smooth front  
20 (except for a control button) and black front face that placed second in a design competition in  
21 2004 was produced to Apple before Mr. Sherman’s deposition.  
22

23 *’381.* A video and chart describing the Diamond Touch prior art, and two pages of the  
24 deposition transcript of Dr. Bedersen, further confirm the invalidity of the ‘381 patent. Samsung  
25 located this art very recently and produced the chart to Apple on October 7, 2011. In addition,  
26 two pages from each of the deposition transcripts of Dr. Balakrishnan and Mr. Woodring reflect  
27 that those two Apple’s experts submitted reply declarations reversing their deposition positions  
28

1 concerning the obviousness of prior art and claim constructions.

2           ***Indefiniteness of D’889.*** Two pages each from the deposition transcripts of Christopher  
3 Stringer and Tracy-Gene Durkin further evidence the indefiniteness of the D’889 patent.

4           ***Non-infringement of D’889.*** Apple does not object to Samsung’s submission of (a)  
5 photographs of the actual prototype Apple based the D’889 patent on or (b) the Galaxy Tab 10.1  
6 versions Samsung is currently selling in the U.S., which displays the Samsung logo on the front.

7           ***Irreparable harm.*** Samsung’s lodged materials include (1) 10 pages of Mr. Wagner’s  
8 testimony that rebut Apple’s mischaracterizations of it; (2) 4 pages of testimony of Justin Denison,  
9 Samsung’s 30(b)(6) witness, which clarify that (a) Samsung did not give away Tabs, but that  
10 BestBuy initiated, and for one week offered, a discount in connection with the bundled purchase  
11 of a high-end television set and Tab and (b) Samsung used the technology accused as infringing  
12 the ‘381 patent in a smartphone it sold in 2007; and (3) 2 pages of Sissie Twiggs’ testimony  
13 rebutting Apple’s belated (and irrelevant) arguments about brand confusion or dilution.  
14  
15

16           ***Public Interest.*** Apple’s Statement of Interest before the ITC reflects that Apple’s own  
17 conception of the public interest is not as limited as it argued on reply.

18           ***Presentation Materials.*** The materials presented to the Court during Samsung’s oral  
19 argument during the October 13, 2011 hearing were also provided to Apple’s counsel that day.

20           ***Apple’s Materials.*** Samsung objects to materials Apple identified earlier today: (i) the  
21 chart Apple created for this filing to respond to Samsung’s invalidity contentions, but has refused  
22 to show Samsung; (ii) Apple’s characterization of additional deposition excerpts as “counter-  
23 designations”; and (iii) Apple’s annotated photographs. Samsung continues to object to Apple’s  
24 eve-of-hearing filing to “augment the record” without permission to do so, which included  
25 documents with numerous translation issues. In contrast, except for the current version of the  
26 Galaxy Tab, Samsung’s submissions address the new arguments of Apple’s reply.  
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DATED: October 17, 2011

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