

1 HAROLD J. MCELHINNY (CA SBN 66781)
 hmcclhinny@mofo.com
 2 MICHAEL A. JACOBS (CA SBN 111664)
 mjacobs@mofo.com
 3 JENNIFER LEE TAYLOR (CA SBN 161368)
 jtaylor@mofo.com
 4 ALISON M. TUCHER (CA SBN 171363)
 atucher@mofo.com
 5 RICHARD S.J. HUNG (CA SBN 197425)
 rhung@mofo.com
 6 JASON R. BARTLETT (CA SBN 214530)
 jasonbartlett@mofo.com
 7 MORRISON & FOERSTER LLP
 425 Market Street
 8 San Francisco, California 94105-2482
 Telephone: (415) 268-7000
 9 Facsimile: (415) 268-7522

WILLIAM F. LEE
 william.lee@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 60 State Street
 Boston, MA 02109
 Telephone: (617) 526-6000
 Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
 mark.selwyn@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 950 Page Mill Road
 Palo Alto, California 94304
 Telephone: (650) 858-6000
 Facsimile: (650) 858-6100

11 Attorneys for Plaintiff and
 12 Counterclaim-Defendant APPLE INC.

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
 22 Korean corporation; SAMSUNG
 23 ELECTRONICS AMERICA, INC., a New
 24 York corporation; and SAMSUNG
 25 TELECOMMUNICATIONS AMERICA,
 26 LLC, a Delaware limited liability company,
 27 Defendants.

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

**APPLE'S ADMINISTRATIVE
 MOTION FOR TEMPORARY
 RELIEF REGARDING LEAD
 COUNSEL MEET AND CONFER
 REQUIREMENT**

Judge: Hon. Lucy H. Koh

1 In accordance with Northern District of California Local Rule 7-11, Apple submits this
2 administrative motion for temporary, limited relief from the “lead trial counsel . . . meet and
3 confer” requirement set forth in the Court’s Minute Order and Case Management Order [D.N.
4 187] (“CMC Order”).

5 Apple has requested that Samsung agree to substantially complete its production of core
6 design, marketing, and technical documents by a date certain before the winter holidays. Apple
7 needs these documents to prepare for depositions expected to take place during January 2012.

8 As detailed in the Declaration of Michael A. Jacobs filed herewith (“Jacobs Decl.”),
9 Apple made a diligent, good-faith effort to schedule a meeting with Samsung’s lead trial counsel,
10 Charles Verhoeven, to discuss the issues in Apple’s motion to compel in person (or otherwise).
11 During two non-lead-trial counsel meetings and in multiple follow-up letters, Apple informed
12 Samsung that it intended, if the parties were unable to reach agreement, to file the motion on
13 December 8, for a proposed hearing on shortened time on or before December 16. (Jacobs Decl.
14 ¶¶ 5–6.) Apple also informed Samsung that Judge Grewal’s calendar reflects his unavailability to
15 hear matters during the week of December 19, 2011.

16 Samsung responded that Mr. Verhoeven is currently in trial on the East Coast and will not
17 be available to meet and confer in person until December 19, 2011. (*Id.* ¶ 9 & Ex. C.) Apple
18 suggested that the parties file a joint stipulation requesting leave for lead counsel to meet and
19 confer telephonically on this occasion, but Samsung did not agree to join that stipulation. (*Id.*)
20 Samsung also did not indicate that Mr. Verhoeven would make himself available by telephone
21 before December 19, 2011, in any event. (*Id.* ¶¶ 9–13 & Exs. C–E.) Samsung further has
22 represented that all of its counsel are unavailable the following week, from December 26, 2011,
23 through January 1, 2012. (*Id.* ¶ 4.)

24 Against this background, Apple’s motion to compel must be heard on or about
25 December 16, 2011, or it cannot be heard until January 2012, and thus Apple cannot wait until
26 December 19 for a lead counsel meet-and-confer to take place. A January 2012 hearing on
27 Apple’s motion to compel would prejudice Apple’s ability to proceed with discovery in a timely,
28 orderly fashion. There is a March 8, 2012 fact discovery cutoff in this case. Depositions

1 therefore need to begin promptly in January 2012. Apple has noticed 37 depositions of design,
2 marketing, and technical witnesses expected to take place in January 2012. For its part, Samsung
3 has now noticed 39 depositions of Apple witnesses.

4 Despite weekly, hours-long meet-and-confer calls between non-lead counsel, however,
5 Samsung has produced almost no documents relating to Apple's offensive case since its
6 Preliminary Injunction production in early October 2011. Since October 13, 2011, the date of the
7 Preliminary Injunction hearing in this case, Samsung has produced **only 71 documents totaling**
8 **241 pages** in connection with Apple's infringement claims against Samsung. (*See* Declaration of
9 Minn Chung in Support of Apple's Motion to Compel Production of Documents and Things, filed
10 concurrently herewith, at ¶ 3.) All of those 71 documents were attachments that had been missing
11 from e-mails Samsung had produced with its Preliminary Injunction production. (*Id.*) Apple,
12 meanwhile, has produced over one million pages in connection with its infringement claims
13 against Samsung. (*Id.*)

14 Once Apple receives documents from Samsung, Apple will need to translate Samsung's
15 Korean-language documents, analyze highly technical materials and source code, and piece
16 together the design history of over thirty Samsung accused products before travelling to Korea to
17 take depositions. Apple will also need significant time to review any materials that are produced
18 to determine if anything is missing and plan further discovery. If Apple does not receive
19 production of the core design, marketing, and technical documents sought in the motion to
20 compel well before January 2012, Apple's ability to conduct meaningful depositions and properly
21 defend its own witnesses in depositions will be unduly compromised.

22 For the foregoing reasons, Apple respectfully requests relief from the Court's "lead trial
23 counsel . . . meet and confer" requirement for purposes of Apple's motion to compel.

24 Dated: December 8, 2011

MORRISON & FOERSTER LLP

25
26 By: /s/ Michael A. Jacobs

Michael A. Jacobs

27 Attorneys for Plaintiff
28 APPLE INC.