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

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 APPLE INC., a California corporation,
 18 Plaintiff,
 19 v.
 20 SAMSUNG ELECTRONICS CO., LTD., a
 Korean corporation; SAMSUNG ELECTRONICS
 21 AMERICA, INC., a New York corporation; and
 SAMSUNG TELECOMMUNICATIONS
 22 AMERICA, LLC, a Delaware limited liability
 company,
 23 Defendants.
 24

Case No. 11-cv-01846-LHK

**APPLE INC.'S MOTION TO
 COMPEL PRODUCTION OF
 DOCUMENTS AND THINGS**

Date: December 16, 2011
 Time: 10:00 a.m.
 Place: Courtroom 5, 4th Floor
 Judge: Hon. Paul S. Grewal

25 **PUBLIC REDACTED VERSION**

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on Friday, December 16, 2011, at 10:00 a.m., or as soon as
4 the matter may be heard by the Honorable Paul S. Grewal in Courtroom 5, United States District
5 Court for the Northern District of California, Robert F. Peckham Federal Building, 280 South 1st
6 Street, San Jose, CA 95113, Apple, Inc. (“Apple”) shall and hereby does move the Court for an
7 order compelling Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and
8 Samsung Telecommunications America, LLC (collectively, “Samsung”) to produce documents
9 showing Samsung’s analysis of Apple in certain areas; documents relating to the design history of
10 its products; and source code, specifications and other technical documents showing the operation
11 of the accused instrumentalities.

12 This motion is based on this notice of motion and supporting memorandum of points and
13 authorities; the supporting Declaration of Michael Jacobs in Support of Apple Inc’s Motion to
14 Compel Production of Documents and Things (the “Jacobs Decl.”) and exhibits attached thereto;
15 and such other written or oral argument as may be presented at or before the time this motion is
16 taken under submission by the Court.

17 Apple has filed concurrently an Administrative Motion for Temporary Relief from Lead
18 Counsel Meet and Confer Requirement, requesting limited relief from the provision in the Court’s
19 Minute Order and Case Management Order [D.N. 187] that requires the parties’ lead trial counsel
20 to meet and confer in person before a discovery motion is filed. As detailed in the Administrative
21 Motion, and the Declaration of Michael A. Jacobs in Support of that motion, Apple has made a
22 diligent, good faith effort to confer with Samsung’s lead trial counsel in person (or otherwise)
23 before filing this motion, but was unsuccessful in doing so.

24 **RELIEF REQUESTED**

25 Pursuant to Federal Rule of Civil Procedure 37 and Patent Local Rule 3-4, Apple seeks an
26 order compelling Samsung to produce four discrete categories of highly-relevant documents:
27 (1) source code and other technical documents showing the operation of the allegedly infringing
28

1 product features; (2) design history documents, including CADs, sketchbooks, and models,
2 showing the decision-making process that led to the design of Samsung's products; (3) emails and
3 documents showing Samsung's analysis and consideration of Apple and Apple products; and (4)
4 relevant survey and marketing documents. At minimum, Samsung should substantially complete
5 its production of the items listed in the Proposed Order filed herewith by the dates specified.

6 Apple also respectfully requests that the Court grant Apple's Motion to Shorten Time for
7 Briefing and Hearing on Apple's Motion to Compel Production of Documents and Things and
8 accompanying Declaration of Michael A. Jacobs in Support of Apple's Motion to Shorten Time,
9 submitted concurrently herewith.

10 **STATEMENT OF ISSUES TO BE DECIDED**

11 1. Whether Apple is entitled to Samsung's substantially complete production by
12 December 23, 2011, of certain categories of source code and other technical documents showing
13 the operation of the allegedly infringing product features documents showing Samsung's analysis
14 and consideration of Apple and Apple's products.

15 2. Whether Apple is entitled to Samsung's substantially complete production by
16 December 23, 2011, of certain categories of design history documents, including CADs,
17 sketchbooks, and models, showing the decision-making process that led to the design of
18 Samsung's products;

19 3. Whether Apple is entitled to Samsung's substantially complete production by
20 December 23, 2011, of certain categories of emails and documents showing Samsung's analysis
21 and consideration of Apple and Apple products; and

22 4. Whether Apple is entitled to Samsung's substantially complete production by
23 December 23, 2011, of certain categories of relevant survey and marketing documents.

24 **APPLE'S CIVIL L.R. 37-2 STATEMENT**

25 Pursuant to Civil L.R. 37-2, Apple's discovery requests to Samsung relating to the four
26 discrete categories of highly-relevant documents that are the subject of this motion are set forth in
27 full below, with Samsung's corresponding objections and/or answers following immediately after
28 each:

1 **FIRST SET OF REQUEST FOR PRODUCTION (PI), REQUEST NO. 1**

2 Documents relating to your analysis, review, consideration, or copying of, or comparison
3 against, any Apple product or product feature in designing, developing, or implementing any
4 feature of the Products at Issue, including (1) their Exterior Design; (2) functionality that allows
5 for an image, list, or webpage to be scrolled beyond its edge until it is partially displayed; and
6 (3) functionality that allows for an image, list, or webpage that is scrolled beyond its edge to
7 scroll back or bounce back into place so that it returns to fill the screen.

8 **OBJECTIONS TO REQUEST FOR PRODUCTION NO. 1:**

9 In addition to its Objections and Responses Common to All Requests for Production,
10 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
11 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
12 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
13 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
14 burdensome, and/or would require undue expense to answer. Samsung further objects to the
15 request as overbroad in that it is not reasonably limited as to the scope of documents and things it
16 seeks. Samsung further objects to this request as oppressive and harassing inasmuch as it implies
17 Samsung engaged in copying and other such activity.

18 Subject to these objections, Samsung will produce relevant, non-privileged documents
19 within its possession, custody, or control, if any, after conducting a reasonable search during the
20 preliminary injunction discovery phase.

21 **FIRST SET OF REQUEST FOR PRODUCTION (PI), REQUEST NO. 2**

22 Documents relating to the existence of and/or work conducted by any group within
23 Defendants that analyzes, analyzed, considers, considered, copies, copied, compares, or compared
24 any Apple product or product feature in developing one or more of the Products at Issue.

25 **OBJECTIONS TO REQUEST FOR PRODUCTION NO. 2:**

26 In addition to its Objections and Responses Common to All Requests for Production,
27 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
28 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney

1 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
2 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
3 burdensome, and/or would require undue expense to answer. Samsung further objects to the
4 request as overbroad in that it is not reasonably limited as to the scope of documents and things it
5 seeks. Samsung further objects to the Request as duplicative of Apple’s Request For Production
6 No. 1. Samsung further objects to this request as oppressive and harassing inasmuch as it implies
7 Samsung engaged in copying and other such activity.

8 Subject to these objections, Samsung will produce relevant, non-privileged documents
9 within its possession, custody, or control, if any, after conducting a reasonable search during the
10 preliminary injunction discovery phase.

11 **SECOND SET FOR REQUESTS FOR PRODUCTION, REQUEST NO. 11:**

12 Documents relating to the Hardware Design and Graphical User Interface Design of the
13 Captivate, Continuum, Fascinate, Galaxy Ace, Galaxy Prevail, Galaxy S (i9000), Galaxy S 4G,
14 Gravity, Indulge, Infuse 4G, Intercept, Mesmerize, Showcase i500, Showcase Galaxy
15 S, Transform, Vibrant, and Galaxy S II phones and the Galaxy tablets.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

17 In addition to its Objections and Responses Common to All Requests for Production,
18 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
19 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
20 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
21 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
22 burdensome, and/or would require undue expense to answer. Samsung further objects the request
23 as vague and ambiguous. For example, the terms “Hardware Design” and “Graphical User
24 Interface Design” and “relating to” are vague and ambiguous. Samsung further objects to the
25 Request as overbroad in that it is not reasonably limited as to the scope of documents and things it
26 seeks. Samsung further objects to the Request to the extent it seeks documents that are not
27 relevant to the claims or defenses of any party and/or not reasonably calculated to lead to the
28 discovery of admissible evidence.

1 Subject to these objections, Samsung is willing to meet and confer with Apple about the
2 relevance and scope of the information sought by this request.

3 **SECOND SET FOR REQUESTS FOR PRODUCTION, REQUEST NO. 12:**

4 Documents relating to the development of the designs, features, and functions in the
5 Products at Issue that are alleged in this action to infringe one or more of the Patents at Issue,
6 including, but not limited to, all documents reviewed for purposes of developing these designs,
7 features, and functions and all computer-aided design files relating to these designs, features, and
8 functions.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

10 In addition to its Objections and Responses Common to All Requests for Production,
11 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
12 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
13 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
14 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
15 burdensome, and/or would require undue expense to answer. Samsung further objects the request
16 as vague and ambiguous. For example, the terms “Products at Issue,” “relating to,” “functions,”
17 and “all documents reviewed for purposes of developing” are vague, ambiguous and overbroad.
18 Samsung further objects to the Request to the extent it seeks documents that are not relevant to
19 the claims or defenses of any party and/or not reasonably calculated to lead to the discovery of
20 admissible evidence. Samsung further objects to the Request as duplicative of Apple’s Request
21 For Production No. 11.

22 Subject to these objections, Samsung will produce relevant, non-privileged documents
23 within its possession, custody, or control, if any, after conducting a reasonable search in
24 accordance with the Patent Local Rules.

25 **SECOND SET FOR REQUESTS FOR PRODUCTION, REQUEST NO. 13:**

26 All documents relating to the development of the Products at Issue that mention or refer to
27 Apple or Apple Products, including communications among or with Your personnel that discuss
28 whether or how to copy any design, feature, or function of an Apple Product. Documents

1 responsive to this Request include, but are not limited to, Your decision to redesign the Galaxy
2 Tab 10.1 to more closely match the design of the iPad 2.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

4 In addition to its Objections and Responses Common to All Requests for Production,
5 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
6 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
7 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
8 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
9 burdensome, and/or would require undue expense to answer. Samsung further objects the request
10 as vague and ambiguous. For example, the terms “Products at Issue,” “relating to” and “redesign”
11 are vague and ambiguous. Samsung further objects to the Request to the extent it seeks
12 documents that are not relevant to the claims or defenses of any party and/or not reasonably
13 calculated to lead to the discovery of admissible evidence. Samsung further objects to the Request
14 as duplicative of Apple’s Request For Production Nos. 1 and 2. Samsung further objects to the
15 Request to the extent it seeks documents that are not within the possession, custody, or control of
16 Samsung. Samsung further objects to this request as oppressive and harassing inasmuch as it
17 implies Samsung engaged in copying and other such activity. Documents produced in response to
18 this request, if any, do not constitute an admission that Samsung “designed the Galaxy Tab 10.1
19 to more closely match the design of the iPad 2.”

20 Subject to these objections, Samsung is willing to meet and confer with Apple about the
21 relevance and scope of the information sought by this request.

22 **SECOND SET FOR REQUESTS FOR PRODUCTION, REQUEST NO. 15:**

23 All documents relating to Your inspection of Apple Products. Documents responsive to
24 this Request include, but are not limited to, photographs of Apple Products and tear-downs of
25 Apple Products, notes and memoranda that You made relating to Apple Products, and email
26 communications relating to any such inspection.

27 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

28 In addition to its Objections and Responses Common to All Requests for Production,

1 which it hereby incorporates by reference Samsung further objects the request as vague and
2 ambiguous. For example, the term “inspection” is vague and ambiguous. Samsung objects to this
3 Request to the extent that it seeks to elicit information subject to and protected by the attorney-
4 client privilege, the attorney work-product doctrine, the joint defense privilege, the common
5 interest doctrine, and/or any other applicable privilege or immunity. Samsung further objects to
6 the Request to the extent it is unduly burdensome, and/or would require undue expense to answer.
7 Samsung further objects to the Request as overbroad in that it seeks documents and things that
8 pertain to products not at issue in this litigation. Samsung further objects to the Request to the
9 extent it seeks documents that are not relevant to the claims or defenses of any party and/or not
10 reasonably calculated to lead to the discovery of admissible evidence. Samsung further objects to
11 the Request as duplicative of Apple’s Request For Production Nos. 13 and 14.

12 Subject to these objections, Samsung is willing to meet and confer with Apple about the
13 relevance and scope of the information sought by this request.

14 **SECOND SET OF REQUESTS FOR PRODUCTION (PI), REQUEST NO. 200**

15 Source code for the Gallery, Contacts, and Browser applications on the Products at Issue.

16 **OBJECTIONS TO REQUEST FOR PRODUCTION NO. 200:**

17 In addition to its Objections and Responses Common to All Requests for Production,
18 which it hereby incorporates by reference, Samsung objects to the Request to the extent it seeks
19 documents containing confidential information, including information subject to the protective
20 order. Samsung further objects to this request because Apple has delayed serving this document
21 request, despite Apple’s earlier knowledge of the issues raised in the request and despite the fact
22 that Apple has known about the Court’s Order governing discovery relating to Apple’s motion for
23 a preliminary injunction since July 18, 2011.

24 Subject to these objections, Samsung is willing to meet and confer with Apple about the
25 relevance and scope of the information sought by this request.

26 **SECOND SET OF REQUESTS FOR PRODUCTION (PI), REQUEST NO. 201**

27 Source code relating to features of the Products at Issue that Apple has alleged infringe
28 U.S. Patent No. 7,469,381.

1 **OBJECTIONS TO REQUEST FOR PRODUCTION NO. 201:**

2 In addition to its Objections and Responses Common to All Requests for Production,
3 which it hereby incorporates by reference, Samsung objects to the Request to the extent it seeks
4 documents containing confidential information, including information subject to the protective
5 order. Samsung further objects to this request because Apple has delayed serving this document
6 request, despite Apple's earlier knowledge of the issues raised in the request and despite the fact
7 that Apple has known about the Court's Order governing discovery relating to Apple's motion for
8 a preliminary injunction since July 18, 2011.

9 Subject to these objections, Samsung is willing to meet and confer with Apple about the
10 relevance and scope of the information sought by this request.

11 **SECOND SET OF REQUESTS FOR PRODUCTION (PI), REQUEST NO. 202**

12 Source code for any instructions relating to not illuminating part of the screens on the
13 Products at Issue while they are powered on.

14 **OBJECTIONS TO REQUEST FOR PRODUCTION NO. 202:**

15 In addition to its Objections and Responses Common to All Requests for Production,
16 which it hereby incorporates by reference, Samsung objects to the Request to the extent it seeks
17 documents containing confidential information, including information subject to the protective
18 order. Samsung further objects to this request because Apple has delayed serving this document
19 request, despite Apple's earlier knowledge of the issues raised in the request and despite the fact
20 that Apple has known about the Court's Order governing discovery relating to Apple's motion for
21 a preliminary injunction since July 18, 2011.

22 Subject to these objections, Samsung is willing to meet and confer with Apple about the
23 relevance and scope of the information sought by this request.

24 **SECOND SET OF REQUESTS FOR PRODUCTION (PI), REQUEST NO. 203**

25 Documents sufficient to show the operation and functionality of the AMOLED screens of
26 the Products at Issue.

1 **OBJECTIONS TO REQUEST FOR PRODUCTION NO. 203:**

2 In addition to its Objections and Responses Common to All Requests for Production,
3 which it hereby incorporates by reference, Samsung objects to the Request to the extent it seeks
4 documents containing confidential information, including information subject to the protective
5 order. Samsung further objects to this request because Apple has delayed serving this document
6 request, despite Apple’s earlier knowledge of the issues raised in the request and despite the fact
7 that Apple has known about the Court’s Order governing discovery relating to Apple’s motion for
8 a preliminary injunction since July 18, 2011.

9 Subject to these objections, Samsung is willing to meet and confer with Apple about the
10 relevance and scope of the information sought by this request.

11 **SECOND SET OF REQUESTS FOR PRODUCTION (PI), REQUEST NO. 204**

12 All Documents relating to your analysis, review, consideration, or copying of, or
13 comparison against, any Apple product or product feature, including (1) their Hardware Design;
14 (2) the functionality that allows for a list to be scrolled beyond its terminus or a document to be
15 translated beyond its edge until the list or document is partially displayed; and (3) functionality
16 that allows for a list that is scrolled beyond its terminus to scroll back or bounce back into place
17 or for a document that is translated beyond its edge to translate back or bounce back so that the
18 list or document returns to fill the screen.

19 **OBJECTIONS TO REQUEST FOR PRODUCTION NO. 204:**

20 In addition to its Objections and Responses Common to All Requests for Production,
21 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
22 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
23 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
24 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
25 burdensome, and/or would require undue expense to answer. Samsung further objects the request
26 as vague and ambiguous and overbroad. For example, the terms “analysis, review, consideration
27 or copying” are vague and ambiguous and overbroad. Samsung further objects to the Request to
28 the extent it seeks documents that are not relevant to the claims or defenses of any party and/or

1 not reasonably calculated to lead to the discovery of admissible evidence. Samsung further
2 objects to this request as oppressive and harassing inasmuch as it implies Samsung engaged in
3 copying and other such activity. Documents produced in response to this request, if any, do not
4 constitute an admission that Samsung “copied” any Apple product or feature. Samsung further
5 objects to this request because Apple has delayed serving this document request, despite Apple’s
6 earlier knowledge of the issues raised in the request and despite the fact that Apple has known
7 about the Court’s Order governing discovery relating to Apple’s motion for a preliminary
8 injunction since July 18, 2011.

9 Subject to these objections, Samsung will produce relevant, non-privileged documents
10 within its possession, custody, or control, if any, after conducting a reasonable search during the
11 preliminary injunction discovery phase.

12 **SECOND SET OF REQUESTS FOR PRODUCTION (PI), REQUEST NO. 205**

13 All Documents relating to any customer surveys, studies, analyses or investigations
14 regarding the Products at Issue.

15 **OBJECTIONS TO REQUEST FOR PRODUCTION NO. 205:**

16 In addition to its Objections and Responses Common to All Requests for Production,
17 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
18 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
19 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
20 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
21 burdensome, and/or would require undue expense to answer. Samsung further objects to this
22 Request as overbroad in that it seeks “all” documents and is not reasonably limited as to the scope
23 of documents and things it seeks. Samsung further objects the request as vague and ambiguous
24 and overbroad in asking for “any statements.” Samsung further objects to the Request as
25 overbroad in that it is not limited to any reasonable time period and seeks documents and things
26 from time periods not at issue in this litigation. Samsung further objects to the Request to the
27 extent it seeks documents that are not relevant to the claims or defenses of any party and/or not
28 reasonably calculated to lead to the discovery of admissible evidence. Samsung further objects to

1 this request because Apple has delayed serving this document request, despite Apple's earlier
2 knowledge of the issues raised in the request and despite the fact that Apple has known about the
3 Court's Order governing discovery relating to Apple's motion for a preliminary injunction since
4 July 18, 2011.

5 Subject to these objections, Samsung is willing to meet and confer with Apple about the
6 relevance and scope of the information sought by this request.

7 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 192:**

8 All Documents relating to your analysis, review, consideration or assessment of any
9 Apple Product or product feature in designing, developing, or implementing any feature of the
10 Products at Issue, including: (1) the Hardware Design; and (2) the Accused Feature.

11 **OBJECTIONS AND RESPONSE TO REQUEST NO. 192:**

12 In addition to its Objections and Responses Common to All Requests for Production,
13 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
14 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
15 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
16 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
17 burdensome, and/or would require undue expense to answer. Samsung further objects to the
18 Request on the basis that it is vague and ambiguous. For example, the terms "analysis, review,
19 consideration or assessment," "product feature," and "designing, developing or implementing"
20 are vague and ambiguous. Samsung further objects to the Request as overbroad in that it seeks
21 documents and things that pertain to features or applications not at issue in this litigation.
22 Samsung further objects to the Request as overbroad and irrelevant to the extent it seeks
23 documents pertaining to the hardware design of products not accused of infringing Apple's
24 alleged trade dress or design patents. Samsung further objects to the Request as seeking "all"
25 documents on a topic. Samsung further objects to the Request as duplicative. For instance, the
26 Request is duplicative of Apple's Requests Nos. 13 and 204. Samsung further objects to the
27 Request to the extent it seeks documents equally available to Apple as to Samsung. Samsung
28 further objects to the Request to the extent the requested documents are publicly available.

1 Subject to and without waiving the foregoing objections and subject to the parties'
2 ongoing meet and confer on such issues, and without representing that any responsive documents
3 exist, Samsung will produce responsive, non-privileged documents and things in its possession,
4 custody and control discovered as a result of a reasonable and diligent search. Samsung will not
5 produce documents pertaining to the hardware design of products not accused of infringing
6 alleged Apple's trade dress or design patents.

7 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 193:**

8 All Documents comparing the operating system installed in the Products at Issue
9 (including but not limited to the Android operating system and/or platform) to the operating
10 system used on the Apple Products, or any part, feature or portion thereof.

11 **OBJECTIONS AND RESPONSE TO REQUEST NO. 193:**

12 In addition to its Objections and Responses Common to All Requests for Production,
13 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
14 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
15 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
16 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
17 burdensome, and/or would require undue expense to answer. Samsung further objects to the
18 Request on the basis that it is vague and ambiguous. For example, the terms "comparing" and
19 "part, feature or portion" are vague and ambiguous. Samsung further objects to the Request as
20 seeking "all" documents on a topic. Samsung further objects to the Request as overbroad in that it
21 seeks documents and things that pertain to features or applications not at issue in this litigation.
22 Samsung further objects to the Request as duplicative. For instance, the Request is duplicative of
23 Apple's Request No. 13.

24 Subject to these objections, Samsung is willing to meet and confer with Apple about the
25 relevance and scope of the information sought by this Request.

1 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 195:**

2 All Documents relating to the work conducted by any group within Defendants that
3 analyzed, considered, or compared any Apple Product or product feature in developing one or
4 more of the Products at Issue.

5 **OBJECTIONS AND RESPONSE TO REQUEST NO. 195:**

6 In addition to its Objections and Responses Common to All Requests for Production,
7 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
8 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
9 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
10 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
11 burdensome, and/or would require undue expense to answer. Samsung further objects to the
12 Request on the basis that it is vague and ambiguous. For example, the terms “analyzed,
13 considered, or compared” and “any Group within Defendants” are vague and ambiguous.
14 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
15 objects to the Request as duplicative. For instance, the Request is duplicative of Apple’s Requests
16 Nos. 2 and 192.

17 Subject to these objections, Samsung is willing to meet and confer with Apple about the
18 relevance and scope of the information sought by this Request.

19 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 207:**

20 All Documents relating to the design, development, production, manufacture, or
21 implementation of the Products at Issue, including but not limited to: (1) their Hardware Design;
22 (2) the operating system used in the Product at Issue; (3) any Samsung application installed in the
23 Product at Issue; (4) the development, production and implementation of any Accused Feature;
24 (5) the design and development of the icons accused of infringement in the Products at Issue.
25 This request covers white papers, designs, plans, specifications, pamphlets, memorandums,
26 schematics, engineering drawings, guides, guidelines, technical overviews, design reports,
27 technical sheets, and any documents identifying the persons involved with these activities.
28

1 **OBJECTIONS AND RESPONSE TO REQUEST NO. 207:**

2 In addition to its Objections and Responses Common to All Requests for Production,
3 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
4 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
5 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
6 applicable privilege or immunity. Samsung further objects to the Request as vague and
7 ambiguous. For example, term “implementation” is vague and ambiguous. Samsung further
8 objects to the Request to the extent it is unduly burdensome, and/or would require undue expense
9 to answer. Samsung further objects to the Request as overbroad in that it seeks documents and
10 things that pertain to features or applications not at issue in this litigation. Samsung further
11 objects to the Request as overbroad and irrelevant to the extent it seeks documents pertaining to
12 the hardware design of products not accused of infringing Apple’s alleged trade dress or design
13 patents. Samsung further objects to the Request as duplicative. For instance, the Request is
14 duplicative of Apple’s Requests Nos. 1, 11, 12, 208, and 209. Samsung further objects to the
15 Request to the extent it seeks documents that are not relevant to the claims or defenses of any
16 party and not reasonably calculated to lead to the discovery of admissible evidence.

17 Subject to and without waiving the foregoing objections and subject to the parties’
18 ongoing meet and confer on such issues, and without representing that any responsive documents
19 exist, Samsung will produce responsive, non-privileged documents and things in its possession,
20 custody and control discovered as a result of a reasonable and diligent search. Samsung will not
21 produce documents pertaining to the hardware design of products not accused of infringing
22 alleged Apple’s trade dress or design patents.

23 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 210:**

24 All Documents and things relating to the Hardware Design of the Products at Issue,
25 including but not limited to, CAD images or files, prototype 3D models (mockups), design
26 history files, emails, notebooks, photographs, sketches, design specifications, models, mock-ups,
27 and other design documents.

1 **OBJECTIONS AND RESPONSE TO REQUEST NO. 210:**

2 In addition to its Objections and Responses Common to All Requests for Production,
3 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
4 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
5 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
6 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
7 burdensome, and/or would require undue expense to answer. Samsung further objects to the
8 Request as overbroad and irrelevant to the extent it seeks documents pertaining to the hardware
9 design of products not accused of infringing Apple’s alleged trade dress or design patents.
10 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
11 objects to the Request as duplicative. For instance, the Request is duplicative of Apple’s Request
12 No. 161.

13 Subject to and without waiving the foregoing objections and subject to the parties’
14 ongoing meet and confer on such issues, and without representing that any responsive documents
15 exist, Samsung will produce responsive, non-privileged documents and things in its possession,
16 custody and control discovered as a result of a reasonable and diligent search. Samsung will not
17 produce documents pertaining to the hardware design of products not accused of infringing
18 alleged Apple’s trade dress or design patents.

19 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 211:**

20 All Documents and things relating to any prior design project that led to the Products at
21 Issue, including but not limited to, CAD images or files, prototype 3D models (mockups), design
22 history files, emails, notebooks, photographs, sketches, design specifications, models, mock-ups,
23 and other design documents.

24 **OBJECTIONS AND RESPONSE TO REQUEST NO. 211:**

25 In addition to its Objections and Responses Common to All Requests for Production,
26 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
27 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
28 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other

1 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
2 burdensome, and/or would require undue expense to answer. Samsung further objects to the
3 Request as vague and ambiguous. For example, the terms “led to” and “prior design project” are
4 vague and ambiguous. Samsung further objects to the Request as overbroad and irrelevant to the
5 extent it seeks documents pertaining to the hardware design of products not accused of infringing
6 Apple’s alleged trade dress or design patents. Samsung further objects to the Request as seeking
7 “all” documents on a topic. Samsung further objects to the Request as overbroad in that it is not
8 limited to any reasonable time period and seeks documents and things from time periods not at
9 issue in this litigation. Samsung further objects to the Request as overbroad in that it seeks
10 documents and things that pertain to products not at issue in this litigation.

11 Subject to these objections, Samsung is willing to meet and confer with Apple about the
12 relevance and scope of the information sought by this Request.

13 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 223:**

14 All Source Code, specifications, schematics, flow charts, artwork, formulas, or other
15 documentation showing the operation of elements of the Products at Issue that are alleged to
16 infringe any of the Patents at Issue.

17 **OBJECTIONS AND RESPONSE TO REQUEST NO. 223:**

18 In addition to its Objections and Responses Common to All Requests for Production,
19 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
20 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
21 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
22 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
23 burdensome, and/or would require undue expense to answer. Samsung further objects to the
24 Request as vague and ambiguous. For example, the terms “showing” and “elements” are vague
25 and ambiguous. Samsung further objects to the Request as seeking “all” documents on a topic.
26 Samsung further objects to the Request to the extent it seeks documents that are not relevant to
27 the claims or defenses of any party and not reasonably calculated to lead to the discovery of
28 admissible evidence. Samsung further objects to the Request to the extent it seeks documents that

1 are not within the possession, custody, or control of Samsung. Samsung further objects to the
2 Request to the extent it seeks documents equally available to Apple as to Samsung. Samsung
3 further objects to the Request to the extent the requested documents are publicly available.

4 Subject to and without waiving the foregoing objections and subject to the parties'
5 ongoing meet and confer on such issues, and without representing that any responsive documents
6 exist, Samsung will produce responsive, non-privileged documents and things in its possession,
7 custody and control discovered as a result of a reasonable and diligent search.

8 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 224:**

9 All Source Code and executables for each version of the operating system (including but
10 not limited to the source code for the Android operating system and/or platform) used in each
11 Product at Issue, including, but not limited to, any kernel, library, or application framework.

12 **OBJECTIONS AND RESPONSE TO REQUEST NO. 224:**

13 In addition to its Objections and Responses Common to All Requests for Production,
14 which it hereby incorporates by reference, Samsung objects to this Request to the extent
15 that it seeks to elicit information subject to and protected by the attorney-client privilege, the
16 attorney work-product doctrine, the joint defense privilege, the common interest doctrine, and/or
17 any other applicable privilege or immunity. Samsung further objects to the Request to the extent
18 it is unduly burdensome, and/or would require undue expense to answer. Samsung further objects
19 to the Request as vague and ambiguous. For example, the term “version” is vague and
20 ambiguous. Samsung further objects to the Request as seeking “all” documents on a topic.
21 Samsung further objects to the Request as overbroad in that it seeks documents and things that
22 pertain to features or applications not at issue in this litigation. Samsung further objects to the
23 Request to the extent it seeks documents that are not relevant to the claims or defenses of any
24 party and not reasonably calculated to lead to the discovery of admissible evidence. Samsung
25 further objects to the Request to the extent it seeks documents that are not within the possession,
26 custody, or control of Samsung. Samsung further objects to the Request to the extent it seeks
27 documents equally available to Apple as to Samsung. Samsung further objects to the Request to
28 the extent the requested documents are publicly available.

1 Subject to these objections, Samsung is willing to meet and confer with Apple about the
2 relevance and scope of the information sought by this Request.

3 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 225:**

4 All Documents showing , for each Product at Issue, the evolution and version history of
5 the operating system (including but not limited to the Android operating system and/or platform)
6 used in that Product at Issue, including, but not limited to, the dates during which each version of
7 operating system was used.

8 **OBJECTIONS AND RESPONSE TO REQUEST NO. 225:**

9 In addition to its Objections and Responses Common to All Requests for Production,
10 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
11 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
12 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
13 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
14 burdensome, and/or would require undue expense to answer. Samsung further objects to the
15 Request as vague and ambiguous. For example, the term “evolution and version history” is vague
16 and ambiguous. Samsung further objects to the Request as seeking “all” documents on a topic.
17 Samsung further objects to the Request as overbroad in that it seeks documents and things that
18 pertain to features or applications not at issue in this litigation. Samsung further objects to the
19 Request to the extent it seeks documents that are not relevant to the claims or defenses of any
20 party and not reasonably calculated to lead to the discovery of admissible evidence. Samsung
21 further objects to the Request to the extent it seeks documents that are not within the possession,
22 custody, or control of Samsung. Samsung further objects to the Request to the extent it seeks
23 documents equally available to Apple as to Samsung. Samsung further objects to the Request to
24 the extent the requested documents are publicly available.

25 Subject to these objections, Samsung is willing to meet and confer with Apple about the
26 relevance and scope of the information sought by this Request.

1 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 226:**

2 All Documents identifying, for each Product at Issue, any updates to the operating system
3 (including, but not limited to, the Android operating system and/or platform) used in the Product
4 at Issue, including, but not limited to, the date(s) when such updates were made available.

5 **OBJECTIONS AND RESPONSE TO REQUEST NO. 226:**

6 In addition to its Objections and Responses Common to All Requests for Production,
7 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
8 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
9 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
10 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
11 burdensome, and/or would require undue expense to answer. Samsung further objects to the
12 Request as vague and ambiguous. For example, the term “updates” is vague and ambiguous.
13 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
14 objects to the Request as overbroad in that it seeks documents and things that pertain to features
15 or applications not at issue in this litigation. Samsung further objects to the Request to the extent
16 it seeks documents that are not relevant to the claims or defenses of any party and not reasonably
17 calculated to lead to the discovery of admissible evidence. Samsung further objects to the Request
18 to the extent it seeks documents that are not within the possession, custody, or control of
19 Samsung. Samsung further objects to the Request to the extent it seeks documents equally
20 available to Apple as to Samsung. Samsung further objects to the Request to the extent the
21 requested documents are publicly available.

22 Subject to these objections, Samsung is willing to meet and confer with Apple about the
23 relevance and scope of the information sought by this Request.

24 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 227:**

25 All Documents referring or relating to the features, operations, characteristics of, or
26 changes made to each version of the operating system (including, but not limited to, the Android
27 operating system and/or platform) used in each Product at Issue, including technical
28

1 specifications as well as instructions relating to deployment, installation, maintenance, and
2 upgrade procedures.

3 **OBJECTIONS AND RESPONSE TO REQUEST NO. 227:**

4 In addition to its Objections and Responses Common to All Requests for Production,
5 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
6 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
7 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
8 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
9 burdensome, and/or would require undue expense to answer. Samsung further objects to the
10 Request as vague and ambiguous. For example, the term “version” is vague and ambiguous.
11 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
12 objects to the Request as overbroad in that it seeks documents and things that pertain to features
13 or applications not at issue in this litigation. Samsung further objects to the Request to the extent
14 it seeks documents that are not relevant to the claims or defenses of any party and not reasonably
15 calculated to lead to the discovery of admissible evidence. Samsung further objects to the Request
16 to the extent it seeks documents that are not within the possession, custody, or control of
17 Samsung. Samsung further objects to the Request to the extent it seeks documents equally
18 available to Apple as to Samsung. Samsung further objects to the Request to the extent the
19 requested documents are publicly available.

20 Subject to these objections, Samsung is willing to meet and confer with Apple about the
21 relevance and scope of the information sought by this Request.

22 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 228:**

23 All Documents showing the operation and functionality of the touch screens (including
24 the display and touch sensor panels) of the Products at Issue, including the Source Code for each
25 version of any software, firmware, program(s), library(ies) or other system used to control the
26 touch screens.

1 **OBJECTIONS AND RESPONSE TO REQUEST NO. 228:**

2 In addition to its Objections and Responses Common to All Requests for Production,
3 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
4 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
5 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
6 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
7 burdensome, and/or would require undue expense to answer. Samsung further objects to the
8 Request as vague and ambiguous. For example, the term “operation and functionality” is vague
9 and ambiguous. Samsung further objects to the Request as seeking “all” documents on a topic.
10 Samsung further objects to the Request as overbroad in that it seeks documents and things that
11 pertain to products not at issue in this litigation. Samsung further objects to the Request as
12 overbroad in that it seeks documents and things that pertain to features or applications not at issue
13 in this litigation. Samsung further objects to the Request to the extent it seeks documents that are
14 not relevant to the claims or defenses of any party and not reasonably calculated to lead to the
15 discovery of admissible evidence. Samsung further objects to the Request to the extent it seeks
16 documents that are not within the possession, custody, or control of Samsung. Samsung further
17 objects to the Request to the extent it seeks documents equally available to Apple as to Samsung.
18 Samsung further objects to the Request to the extent the requested documents are publicly
19 available.

20 Subject to these objections, Samsung is willing to meet and confer with Apple about the
21 relevance and scope of the information sought by this Request.

22 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 229:**

23 All Documents showing, for each Product at Issue, the evolution and version history of
24 any software, firmware, program(s), library(ies) or other system used to control the touch screens
25 (including the display and touch sensor panels) of the Products at Issue, including but not limited
26 to the dates during which each version was in use.

1 **OBJECTIONS AND RESPONSE TO REQUEST NO. 229:**

2 In addition to its Objections and Responses Common to All Requests for Production,
3 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
4 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
5 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
6 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
7 burdensome, and/or would require undue expense to answer. Samsung further objects to the
8 Request as vague and ambiguous. For example, the term “evolution and version history” is vague
9 and ambiguous. Samsung further objects to the Request as seeking “all” documents on a topic.
10 Samsung further objects to the Request as overbroad in that it seeks documents and things that
11 pertain to features or applications not at issue in this litigation. Samsung further objects to the
12 Request to the extent it seeks documents that are not relevant to the claims or defenses of any
13 party and not reasonably calculated to lead to the discovery of admissible evidence. Samsung
14 further objects to the Request to the extent it seeks documents that are not within the possession,
15 custody, or control of Samsung. Samsung further objects to the Request to the extent it seeks
16 documents equally available to Apple as to Samsung. Samsung further objects to the Request to
17 the extent the requested documents are publicly available.

18 Subject to these objections, Samsung is willing to meet and confer with Apple about the
19 relevance and scope of the information sought by this Request.

20 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 230:**

21 All Documents identifying, for each Product at Issue, any update to any software,
22 firmware, program(s), library(ies) or other system used to control the touch screens (including the
23 display and touch sensor panels) of the Products at Issue, including, but not limited to, the date(s)
24 when such updates were made available.

25 **OBJECTIONS AND RESPONSE TO REQUEST NO. 230:**

26 In addition to its Objections and Responses Common to All Requests for Production,
27 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
28 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney

1 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
2 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
3 burdensome, and/or would require undue expense to answer. Samsung further objects to the
4 Request as vague and ambiguous. For example, the term “update” is vague and ambiguous.
5 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
6 objects to the Request as overbroad in that it seeks documents and things that pertain to features
7 or applications not at issue in this litigation. Samsung further objects to the Request to the extent
8 it seeks documents that are not relevant to the claims or defenses of any party and not reasonably
9 calculated to lead to the discovery of admissible evidence. Samsung further objects to the Request
10 to the extent it seeks documents that are not within the possession, custody, or control of
11 Samsung. Samsung further objects to the Request to the extent it seeks documents equally
12 available to Apple as to Samsung. Samsung further objects to the Request to the extent the
13 requested documents are publicly available.

14 Subject to these objections, Samsung is willing to meet and confer with Apple about the
15 relevance and scope of the information sought by this Request.

16 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 231:**

17 All Documents referring or relating to the features, operations, characteristics of, or
18 changes made to each version of the any software, firmware, program(s), library(ies) or other
19 system used to control the touch screens (including the display and touch sensor panels) of the
20 Products at Issue, including technical specifications as well as instructions relating to deployment,
21 installation, maintenance, and upgrade procedures.

22 **OBJECTIONS AND RESPONSE TO REQUEST NO. 231:**

23 In addition to its Objections and Responses Common to All Requests for Production,
24 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
25 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
26 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
27 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
28 burdensome, and/or would require undue expense to answer. Samsung further objects to the

1 Request as seeking “all” documents on a topic. Samsung further objects to the Request as vague
2 and ambiguous. For example, the term “version” is vague and ambiguous. Samsung further
3 objects to the Request as overbroad in that it seeks documents and things that pertain to features
4 or applications not at issue in this litigation. Samsung further objects to the Request to the extent
5 it seeks documents that are not relevant to the claims or defenses of any party and not reasonably
6 calculated to lead to the discovery of admissible evidence. Samsung further objects to the Request
7 to the extent it seeks documents that are not within the possession, custody, or control of
8 Samsung. Samsung further objects to the Request to the extent it seeks documents equally
9 available to Apple as to Samsung. Samsung further objects to the Request to the extent the
10 requested documents are publicly available.

11 Subject to these objections, Samsung is willing to meet and confer with Apple about the
12 relevance and scope of the information sought by this Request.

13 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 232:**

14 All Source Code and executables for each version of each Samsung application installed
15 in the Products at Issue, including for each of the following applications: Contacts, Browser
16 (Internet), Calendar, Email, Music Player, Feeds & Updates, Camera, Gallery, Alarms and Clock
17 (Clock), Daily Briefing, Voice Recorder, Video Player, TouchWiz Launcher, My Files,
18 Mediahub, and Memo.

19 **OBJECTIONS AND RESPONSE TO REQUEST NO. 232:**

20 In addition to its Objections and Responses Common to All Requests for Production,
21 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
22 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
23 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
24 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
25 burdensome, and/or would require undue expense to answer. Samsung further objects to the
26 Request as vague and ambiguous. For example, the term “version” is vague and ambiguous.
27 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
28 objects to the Request as overbroad in that it seeks documents and things that pertain to features

1 or applications not at issue in this litigation. Samsung further objects to the Request to the extent
2 it seeks documents that are not within the possession, custody, or control of Samsung. Samsung
3 further objects to the Request to the extent it seeks documents equally available to Apple as to
4 Samsung. Samsung further objects to the Request to the extent the requested documents are
5 publicly available. Samsung further objects to the Request to the extent it seeks documents that
6 are not relevant to the claims or defenses of any party and not reasonably calculated to lead to the
7 discovery of admissible evidence.

8 Subject to these objections, Samsung is willing to meet and confer with Apple about the
9 relevance and scope of the information sought by this Request.

10 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 233:**

11 All Documents showing, for each Product at Issue, the evolution and version history of
12 each Samsung application installed in the Products at Issue, including but not limited to the dates
13 during which each version of each application was installed, and the identity of each product in
14 which the application was installed.

15 **OBJECTIONS AND RESPONSE TO REQUEST NO. 233:**

16 In addition to its Objections and Responses Common to All Requests for Production,
17 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
18 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
19 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
20 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
21 burdensome, and/or would require undue expense to answer. Samsung further objects to the
22 Request as vague and ambiguous. For example, the term “evolution and version history” is vague
23 and ambiguous. Samsung further objects to the Request as seeking “all” documents on a topic.
24 Samsung further objects to the Request as overbroad in that it seeks documents and things that
25 pertain to features or applications not at issue in this litigation. Samsung further objects to the
26 Request to the extent it seeks documents that are not within the possession, custody, or control of
27 Samsung. Samsung further objects to the Request to the extent it seeks documents equally
28 available to Apple as to Samsung. Samsung further objects to the Request to the extent the

1 requested documents are publicly available.

2 Subject to these objections, Samsung is willing to meet and confer with Apple about the
3 relevance and scope of the information sought by this Request.

4 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 234:**

5 All Documents identifying, for each Product at Issue, any updates to each Samsung
6 application installed in the Products at Issue, including, but not limited to, the date(s) when such
7 updates were made available.

8 **OBJECTIONS AND RESPONSE TO REQUEST NO. 234:**

9 In addition to its Objections and Responses Common to All Requests for Production,
10 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
11 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
12 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
13 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
14 burdensome, and/or would require undue expense to answer. Samsung further objects to the
15 Request as vague and ambiguous. For example, the term “updates” is vague and ambiguous.
16 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
17 objects to the Request as overbroad in that it seeks documents and things that pertain to features
18 or applications not at issue in this litigation. Samsung further objects to the Request to the extent
19 it seeks documents that are not within the possession, custody, or control of Samsung. Samsung
20 further objects to the Request to the extent it seeks documents equally available to Apple as to
21 Samsung. Samsung further objects to the Request to the extent the requested documents are
22 publicly available.

23 Subject to these objections, Samsung is willing to meet and confer with Apple about the
24 relevance and scope of the information sought by this Request.

25 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 235:**

26 All Documents referring or relating to the features, operations, characteristics of, or
27 changes made to each version of any Samsung application installed in the Products at Issue,
28 including, but not limited to, those relating to deployment, installation, maintenance, and upgrade

1 procedures.

2 **OBJECTIONS AND RESPONSE TO REQUEST NO. 235:**

3 In addition to its Objections and Responses Common to All Requests for Production,
4 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
5 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
6 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
7 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
8 burdensome, and/or would require undue expense to answer. Samsung further objects to the
9 Request as vague and ambiguous. For example, the term “version” is vague and ambiguous.
10 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
11 objects to the Request as overbroad in that it seeks documents and things that pertain to features
12 or applications not at issue in this litigation. Samsung further objects to the Request to the extent
13 it seeks documents that are not within the possession, custody, or control of Samsung. Samsung
14 further objects to the Request to the extent it seeks documents equally available to Apple as to
15 Samsung. Samsung further objects to the Request to the extent the requested documents are
16 publicly available.

17 Subject to these objections, Samsung is willing to meet and confer with Apple about the
18 relevance and scope of the information sought by this Request.

19 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 240:**

20 All Documents concerning the design, manufacture, specifications and operation of the
21 touch screens (including the display and touch sensor panels) on the Products at Issue.

22 **OBJECTIONS AND RESPONSE TO REQUEST NO. 240:**

23 In addition to its Objections and Responses Common to All Requests for Production,
24 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
25 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
26 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
27 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
28 burdensome, and/or would require undue expense to answer. Samsung further objects to the

1 Request as seeking “all” documents on a topic. Samsung further objects to the Request as
2 overbroad in that it seeks documents and things that pertain to features or applications not at issue
3 in this litigation. Samsung further objects to the Request to the extent it seeks documents that are
4 not relevant to the claims or defenses of any party and not reasonably calculated to lead to the
5 discovery of admissible evidence. Samsung further objects to the Request to the extent it seeks
6 documents that are not within the possession, custody, or control of Samsung. Samsung further
7 objects to the Request to the extent it seeks documents equally available to Apple as to Samsung.
8 Samsung further objects to the Request to the extent the requested documents are publicly
9 available.

10 Subject to these objections, Samsung is willing to meet and confer with Apple about the
11 relevance and scope of the information sought by this Request.

12 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 241:**

13 All Source Code and executables for any software, firmware, program(s), library(ies) or
14 other system used to control the touch screens (including the display and touch sensor panels) on
15 the Products at Issue.

16 **OBJECTIONS AND RESPONSE TO REQUEST NO. 241:**

17 In addition to its Objections and Responses Common to All Requests for Production,
18 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
19 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
20 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
21 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
22 burdensome, and/or would require undue expense to answer. Samsung further objects to the
23 Request as seeking “all” documents on a topic. Samsung further objects to the Request as
24 overbroad in that it seeks documents and things that pertain to features or applications not at issue
25 in this litigation. Samsung further objects to the Request to the extent it seeks documents that are
26 not relevant to the claims or defenses of any party and not reasonably calculated to lead to the
27 discovery of admissible evidence. Samsung further objects to the Request to the extent it seeks
28 documents that are not within the possession, custody, or control of Samsung. Samsung further

1 objects to the Request to the extent it seeks documents equally available to Apple as to Samsung.
2 Samsung further objects to the Request to the extent the requested documents are publicly
3 available.

4 Subject to these objections, Samsung is willing to meet and confer with Apple about the
5 relevance and scope of the information sought by this Request.

6 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 242:**

7 All Source Code and executables for any software, firmware, program(s), library(ies) or
8 other system running on any monitoring circuitry, integrated circuit, chip, controller or module
9 used to operate the touch screens (including the display and touch sensor panels) on the Products
10 at Issue.

11 **OBJECTIONS AND RESPONSE TO REQUEST NO. 242:**

12 In addition to its Objections and Responses Common to All Requests for Production,
13 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
14 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
15 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
16 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
17 burdensome, and/or would require undue expense to answer. Samsung further objects to the
18 Request as seeking “all” documents on a topic. Samsung further objects to the Request as
19 overbroad in that it seeks documents and things that pertain to features or applications not at issue
20 in this litigation. Samsung further objects to the Request to the extent it seeks documents that are
21 not relevant to the claims or defenses of any party and not reasonably calculated to lead to the
22 discovery of admissible evidence. Samsung further objects to the Request to the extent it seeks
23 documents that are not within the possession, custody, or control of Samsung. Samsung further
24 objects to the Request to the extent it seeks documents equally available to Apple as to Samsung.
25 Samsung further objects to the Request to the extent the requested documents are publicly
26 available.

27 Subject to these objections, Samsung is willing to meet and confer with Apple about the
28 relevance and scope of the information sought by this Request.

1 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 243:**

2 All Documents showing the arrangement and specification of traces, conductive lines,
3 conductive layers, glass, dielectrics, substrates, adhesives, and other elements used to construct
4 the touch screens (including the display and touch sensor panels) of the Products at Issue.

5 **OBJECTIONS AND RESPONSE TO REQUEST NO. 243:**

6 In addition to its Objections and Responses Common to All Requests for Production,
7 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
8 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
9 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
10 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
11 burdensome, and/or would require undue expense to answer. Samsung further objects to the
12 Request as vague and ambiguous. For example, the term “elements” is vague and ambiguous.
13 Samsung further objects to the Request as seeking “all” documents on a topic. Samsung further
14 objects to the Request as overbroad in that it seeks documents and things that pertain to features
15 or applications not at issue in this litigation. Samsung further objects to the Request to the extent
16 it seeks documents that are not relevant to the claims or defenses of any party and not reasonably
17 calculated to lead to the discovery of admissible evidence. Samsung further objects to the Request
18 to the extent it seeks documents that are not within the possession, custody, or control of
19 Samsung. Samsung further objects to the Request to the extent it seeks documents equally
20 available to Apple as to Samsung. Samsung further objects to the Request to the extent the
21 requested documents are publicly available.

22 Subject to these objections, Samsung is willing to meet and confer with Apple about the
23 relevance and scope of the information sought by this Request.

24 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 244:**

25 All Documents concerning the design, manufacture, specification and operation of any
26 monitoring circuitry, integrated circuit, chip, controller or module used to operate the touch
27 screens (including the display and touch sensor panels) of the Products at Issue.

1 **OBJECTIONS AND RESPONSE TO REQUEST NO. 244:**

2 In addition to its Objections and Responses Common to All Requests for Production,
3 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
4 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
5 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
6 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly
7 burdensome, and/or would require undue expense to answer. Samsung further objects to the
8 Request as seeking “all” documents on a topic. Samsung further objects to the Request as
9 overbroad in that it seeks documents and things that pertain to features or applications not at issue
10 in this litigation. Samsung further objects to the Request to the extent it seeks documents that are
11 not relevant to the claims or defenses of any party and not reasonably calculated to lead to the
12 discovery of admissible evidence. Samsung further objects to the Request to the extent it seeks
13 documents that are not within the possession, custody, or control of Samsung. Samsung further
14 objects to the Request to the extent it seeks documents equally available to Apple as to Samsung.
15 Samsung further objects to the Request to the extent the requested documents are publicly
16 available.

17 Subject to these objections, Samsung is willing to meet and confer with Apple about the
18 relevance and scope of the information sought by this Request.

19 **SIXTH SET OF REQUESTS FOR PRODUCTION, REQUEST NO. 245:**

20 All data sheets concerning the touch screens (including the display and touch sensor
21 panels) on the Products at Issue or any monitoring circuitry, integrated circuit, chip, controller or
22 module used to operate said touch screens.

23 **OBJECTIONS AND RESPONSE TO REQUEST NO. 245:**

24 In addition to its Objections and Responses Common to All Requests for Production,
25 which it hereby incorporates by reference, Samsung objects to this Request to the extent that it
26 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
27 work-product doctrine, the joint defense privilege, the common interest doctrine, and/or any other
28 applicable privilege or immunity. Samsung further objects to the Request to the extent it is unduly

1 burdensome, and/or would require undue expense to answer. Samsung further objects to the
2 Request as seeking “all” documents on a topic. Samsung further objects to the Request as
3 overbroad in that it seeks documents and things that pertain to features or applications not at issue
4 in this litigation. Samsung further objects to the Request to the extent it seeks documents that are
5 not relevant to the claims or defenses of any party and not reasonably calculated to lead to the
6 discovery of admissible evidence. Samsung further objects to the Request to the extent it seeks
7 documents that are not within the possession, custody, or control of Samsung. Samsung further
8 objects to the Request to the extent it seeks documents equally available to Apple as to Samsung.
9 Samsung further objects to the Request to the extent the requested documents are publicly
10 available.

11 Subject to these objections, Samsung is willing to meet and confer with Apple about the
12 relevance and scope of the information sought by this Request.

13 **APPLE’S CERTIFICATION PURSUANT TO FED. R. CIV. P. 37(A)(1)**

14 Apple hereby certifies that it has in good faith conferred with Samsung in an effort to
15 obtain the discovery described immediately above without Court action. Apple’s efforts to
16 resolve this discovery dispute without court intervention are described in the Declaration of Mia
17 Mazza in Support of Motion to Compel Production of Documents and Things (the “Mazza
18 Decl.”) and exhibits attached thereto, submitted concurrently herewith.

19 Dated: December 8, 2011

MORRISON & FOERSTER LLP

21 By: /s/ Michael A. Jacobs
22 Michael A. Jacobs

23 Attorneys for Plaintiff
24 APPLE INC.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
NOTICE OF MOTION AND MOTION	i
RELIEF REQUESTED	i
STATEMENT OF ISSUES TO BE DECIDED	ii
APPLE’S CIVIL L.R. 37-2 STATEMENT	ii
APPLE’S CERTIFICATION PURSUANT TO FED. R. CIV. P. 37(a)(1).....	xxxii
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. FACTS	2
III. LEGAL STANDARDS.....	4
IV. ARGUMENT	5
A. Apple Needs Documents to Conduct the Depositions of Samsung’s Witnesses in the Next Two Months.	5
B. Apple Has Repeatedly—Without Success—Asked Samsung to Produce Certain Categories of Core Documents.....	6
1. Apple Has Repeatedly Asked for the Source Code It Needs Immediately to Prove its Infringement Allegations.	6
2. Apple Needs Evidence Regarding the Design History of Samsung’s Products.....	9
3. Apple Needs Evidence Regarding Samsung’s Consideration of Apple and Apple Products.	10
4. Apple Needs Survey Evidence to Depose Marketing Witnesses...	12
V. CONCLUSION	12

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

CASES

AC Aukerman Co. v. RL Chaides Const. Co.,
960 F.2d 1020 (Fed. Cir. 1992)..... 9

Avia Group Int’l, Inc. v. L.A. Gear California, Inc.,
853 F.2d 1557 (Fed. Cir. 1988)..... 9

Best Lock Corp. v. Ilco Unican Corp.,
94 F.3d 1563 (Fed. Cir. 1996)..... 9

Cryptography Research, Inc. v. Visa Int’l Serv. Ass’n,
No. C04-04143 JW (HRL),
2005 U.S. Dist. LEXIS 37013 (N.D. Cal. July 27, 2005)..... 8

Egyptian Goddess, Inc. v. Swisa, Inc.,
543 F.3d 665 (Fed. Cir. 2008)..... 9

John H. Harland Co. v. Clarke Checks, Inc.,
711 F.2d 966 (11th Cir. 1983)..... 9

Nova Measuring Instruments Ltd. v. Nanometrics, Inc.,
417 F. Supp. 2d 1121 (N.D. Cal. 2006) 8

Nova Measuring Instruments Ltd. v. Nanometrics, Inc.,
No. C 05-0986..... 8

Vandenberg v. Dairy Equip. Co., Div. of DEC Int’l, Inc.,
740 F.2d 1560 (Fed. Cir. 1984)..... 9

RULES

Fed. R. Civ. P.
26(b)(1) 4
34(a) 4
37(a)(3)(B)(iv)..... 4

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Apple moves to compel the production of four discrete categories of highly relevant
4 documents: (1) source code and other technical documents showing the operation of the allegedly
5 infringing product features; (2) design history documents, including CADs, sketchbooks, and
6 models, showing the decision-making process that led to the design of Samsung's products;
7 (3) emails and documents showing Samsung's analysis and consideration of Apple and Apple
8 products; and (4) relevant survey and marketing documents. Although these documents should
9 have been produced months ago, Samsung has refused to commit to the following schedule for
10 substantially completing its production of these documents: by December 15, 2011, for source
11 code and other technical documents, emails and documents that show consideration of Apple and
12 its products, and survey documents; by December 23 for design history documents, such as
13 sketchbooks and models; and by December 31 for Computer Aided Drawings ("CAD").

14 This case has been set for trial on an expedited schedule. Opening claim construction
15 briefing was due on December 8, 2011. The depositions of Samsung's technical, design, and
16 marketing witnesses will begin in a few weeks. The fact discovery cut-off date has been set for
17 March 8, 2011.

18 With only three months remaining for discovery, Apple has received almost no documents
19 relevant to its infringement allegations. Since October 2011, Samsung has produced *only 71*
20 *documents and totaling 241 pages* responsive to Apple's document requests in Apple's offensive
21 case against Samsung. And most of these 241 pages were irrelevant, as they merely contained
22 automatic email trailers regarding inadvertent receipt and confidentiality.

23 Samsung has failed to produce any source code showing the structure and operation of the
24 accused features in its products. Likewise, Samsung has not produced any of its designers'
25 notebooks, meeting minutes, emails, or CADs showing the evolution of its product designs. And
26 it is not even close to completing its production of documents showing its analysis and copying of
27 Apple and Apple products. Finally, even though it was ordered by the Court to do so, Samsung
28 has not yet completed its production of relevant survey and marketing documents.

1 Even after Apple receives this production of source code, design history files, documents
2 evidencing Samsung's consideration of Apple and Apple products, and relevant survey and
3 marketing documents, Apple will need significant time to review the documents. First, Apple
4 will need to translate the Korean language documents into English. It will then take several
5 weeks to review and analyze these highly complex technical documents and piece together the
6 design history of nearly thirty Samsung accused products.

7 Meanwhile, Apple has noticed 37 depositions for December 2011 and January 2012. The
8 deponents are Samsung designers, programmers, and other individuals with knowledge of the
9 evolution of Samsung's products. To complicate matters further, Samsung has insisted that
10 Apple travel to Korea to take these depositions. These considerations significantly compress the
11 time available to Apple to prepare for the depositions.

12 Moreover, this round of document production will likely elicit additional discovery. In
13 particular, these documents will help Apple identify additional witnesses that need to be deposed
14 to develop and execute Apple's case against Samsung. Further, Apple requires an opportunity to
15 obtain any documents it determines is missing from Samsung's production, review of which will
16 likely lead to the need for additional depositions.

17 With the close of fact discovery only three months away and multiple depositions noticed,
18 Apple requires these critical categories of documents *immediately*. Samsung should not be
19 permitted to produce hundreds of thousands of highly relevant documents at the eleventh hour.
20 By dragging its feet, Samsung jeopardizes Apple's ability to prepare for upcoming depositions,
21 prejudices Apple's development of its case strategy, and interferes with Apple's ability to prepare
22 for trial. Accordingly, the Court should compel Samsung to substantially complete by December
23 23, 2011, its production of the four specific categories of documents that Apple has identified as
24 being most critical to trying its case.

25 **II. FACTS**

26 With a March 8 discovery cut-off that is only a short three months away, Samsung has
27 produced almost no documents related to Apple's infringement allegations. As described more
28 fully in Apple's prior motion to compel, Samsung's productions during the preliminary injunction

1 phase of this case were almost completely devoid of documents relevant to Apple’s infringement
2 allegations. Samsung produced only 49,442 pages of materials before Apple filed its first motion
3 to compel, padding its productions with irrelevant documents. (Declaration of Minn Chung in
4 Support of Apple’s Motion to Compel Production of Documents and Things (“Chung Decl.”) at ¶
5 10.) Before it was ordered by the Court on September 28, 2011, to produce such documents,
6 Samsung had produced no documents relating to the analysis of Apple’s designs by Samsung
7 designers—not even discussions of design decisions or emails from the Samsung designers
8 responsible for the industrial design of Samsung’s Galaxy S products. (*Id.* at ¶ 8.)

9 Even after the Court order, Samsung produced very few documents containing discussions
10 of design decisions by Samsung’s industrial designers during the development process, and none
11 relating to the accused features. (*Id.* at ¶¶ 11-12.) There were no documents containing any
12 discussion of the main design features of Samsung’s products, nor was there any document
13 describing the design history of the accused products. (*Id.* at ¶ 12.) Moreover, all documents
14 produced during this period were limited to the four products and one feature at issue in Apple’s
15 preliminary injunction motion. (*Id.*)

16 And since October 13, 2011, the date of the Preliminary Injunction hearing in this case,
17 Samsung has produced only approximately 3400 documents, totaling about 152,000 pages. (*Id.* at
18 ¶ 3.) Of these, only 71 documents and 241 pages were responsive to Apple’s document requests
19 and related to Apple’s infringement claims in its case against Samsung. (*Id.*) These were
20 supplementary productions of missing email attachments, many of which were irrelevant one
21 page documents containing automatic email trailers regarding inadvertent receipt and
22 confidentiality. (*Id.* at 5, 6.)

23 To date, Samsung has produced no source code showing the structure and operation of the
24 accused features, and only a handful of technical documents, mostly relating to third-party
25 hardware components. (*Id.* at ¶ 19.) Samsung’s production of CAD files was limited to TIFF
26 images of only the *final* design of only *four* of the Products at Issue. (*Id.* at ¶ 9.) Samsung’s
27 production is almost completely devoid of designers’ emails, minutes from design or
28 development meetings, sketches of draft designs from Samsung’s industrial designers, CAD files

1 for draft designs, or any other document likely to be generated during the design or development
2 of the accused devices. (*Id.* at ¶ 18.) Likewise, Samsung has produced no sketchbooks or
3 prototypes from the designers responsible for developing the allegedly infringing designs. (*Id.*)
4 Aside from a handful of documents produced as a result of the September 28 Court order and
5 which was limited to the single feature that was accused during the preliminary injunction phase,
6 Samsung has failed to produce any emails or documents showing the development of the accused
7 features or its analysis of Apple or Apple products. (*Id.* at ¶¶ 12-13.)

8 In short, with only three months left in discovery, Samsung has produced next to nothing
9 relevant to Apple’s infringement allegations against Samsung.

10 Apple has filed concurrently an Administrative Motion for Temporary Relief from Lead
11 Counsel Meet and Confer Requirement, requesting limited relief from the provision in the Court’s
12 Minute Order and Case Management Order [D.N. 187] that requires the parties’ lead trial counsel
13 to meet and confer in person before a discovery motion is filed. As detailed in the Administrative
14 Motion, and the Declaration of Michael A. Jacobs in Support of that motion, Apple has made a
15 diligent, good faith effort to confer with Samsung’s lead trial counsel in person (or otherwise)
16 before filing this motion, but was unsuccessful in doing so.

17 **III. LEGAL STANDARDS**

18 A party is entitled to seek discovery of “any nonprivileged matter that is relevant to any
19 party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). “A party may serve on any other party a
20 request within the scope of Rule 26(b): (1) to produce . . . (A) any designated documents . . . or
21 (B) any designated tangible things.” Fed. R. Civ. P. 34(a).

22 “A party seeking discovery may move for an order compelling . . . production, or
23 inspection. This motion may be made if: . . . a party fails to respond that inspection [of such
24 documents or tangible things] will be permitted – or fails to permit inspection – as requested
25 under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B)(iv).

26 Patent Civil Local Rule 3-4(a) provides for the automatic production of source code and
27 technical documents concurrently with the defendants’ invalidity contentions. It states: “With
28 the Invalidity Contentions, the party opposing a claim of patent infringement shall produce or

1 make available for inspection and copying: (a) Source code, specifications, schematics, flow
2 charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects
3 or elements of an Accused Instrumentality identified by the patent claimant in its Patent
4 L.R. 3-1(c) chart.”

5 **IV. ARGUMENT**

6 Samsung does not dispute the relevance of the requested documents, but it refuses to make
7 a sufficiently firm commitment to substantially produce – by the dates needed by Apple for
8 purposes of deposing witnesses and preparing its case – of a limited, specific scope of documents
9 that Apple deems to be most important in executing its case. Samsung should not be permitted to
10 produce thousands of pages of complex, foreign-language materials at the last minute. First,
11 Apple needs these specific categories of documents to prepare for upcoming depositions of
12 Samsung witnesses. Second, Apple’s repeated requests to Samsung for a sufficiently firm
13 commitment to produce these documents have been unsuccessful.

14 **A. Apple Needs Documents to Conduct the Depositions of Samsung’s Witnesses
15 in the Next Two Months.**

16 In anticipation of a March 8, 2011, discovery cutoff, Apple has noticed the depositions of
17 37 Samsung witnesses for December 2011 and January 2011. At least two of these witnesses,
18 Woogyun Kho and Ioi Lam, are software programmers who [REDACTED]
19 [REDACTED]

20 (See Samsung’s Second Supplemental Objections and Responses to Apple’s Interrogatory No. 11,
21 dated Nov. 21, 2011.) Twenty of these individuals are industrial or graphical user interface
22 designers, identified by Samsung or its documents, as being involved in the design of the
23 Products at Issue – some of them involved in the hardware redesign of the Galaxy Tab 10.1.
24 Others were copied on documents [REDACTED].

25 Most of Samsung’s witnesses are Korean employees whose documents are generally in
26 Korean and will need to be translated. Moreover, Samsung has insisted that these depositions
27 take place in Korea. Apples needs sufficient time to translate the documents, review and analyze
28 them – many of which are highly technical in nature – and prepare for the depositions of these

1 witnesses based on its review of the documents. Samsung’s delay in producing these documents
2 significantly prejudices Apple’s ability to prepare for the depositions of Samsung’s technical,
3 design, and marketing witnesses and to prepare its case.

4 **B. Apple Has Repeatedly—Without Success—Asked Samsung to Produce**
5 **Certain Categories of Core Documents.**

6 Since October 19, 2011, in an attempt to resolve discovery issues and negotiate the
7 parameters of each party’s production, the parties’ non-lead trial counsel have met and conferred
8 on a weekly basis. (Mazza Decl. at ¶ 2.) These meetings have typically lasted several hours.
9 (*Id.*) In these discussions, and in follow-up correspondence, Apple has repeatedly requested
10 discrete categories of core technical, design, and marketing documents that it must receive
11 immediately to prepare for the upcoming depositions of 37 Samsung witnesses. (*Id.*) Despite
12 repeated requests from Apple, however, Samsung has refused to commit to substantially
13 completing its production of these documents by the dates requested by Apple. (*Id.* at ¶ 28.)

14 **1. Apple Has Repeatedly Asked for the Source Code It Needs**
15 **Immediately to Prove its Infringement Allegations.**

16 Apple served Samsung with its infringement contentions on August 26, 2011, alleging
17 that Samsung’s smartphones and tablets infringed eight of Apple’s utility patents:¹ (1) U.S.
18 Patent No. 6,493,002; (2) U.S. Patent No. 7,469,381; (3) U.S. Patent No. 7,853,891; (4) U.S.
19 Patents Nos. 7,864,163; (5) U.S. Patent No. 7,844,915; (6) U.S. Patents No. 7,812,828; (7) U.S.
20 Patent No. 7,663,607; and (8) U.S. Patent 7,920,129. (*Id.* at ¶ 4.) These patents cover various
21 aspects of the user interface as well as features, such as the “rubber-band” function that allows a
22 document to be scrolled beyond its edge, then snapped back into place, as well as systems and
23 methods for detecting and interpreting user input or gestures on a touch screen display – that are
24 implemented in Samsung’s devices using software, including code contained in Samsung’s
25 operating system and applications.

26 _____
27 ¹ Apple has also accused Samsung’s smartphones and tablets of infringing seven design
28 patents. (*See* Amended Complaint ¶ 29.)

1 None of the source code and technical information requested by Apple is publicly
2 available. While some source code used in the operating system for Samsung's devices does
3 exist publicly, Samsung has told Apple that it "does not admit that the open source Android code
4 executes on the Accused Instrumentalities, nor does Samsung admit that the open source Android
5 code is representative of the actual code that runs on the Accused Devices." (Ltr. From Maroulis
6 to Bartlett, dated Sept. 28, 2011.) Without access to Samsung's source code and other technical
7 documents, Apple will not be able to formulate its case strategy.

8 Samsung then served its invalidity contentions on October 7, 2011, but did not produce
9 any technical information as required by Patent Local Rule 3-4(a), other than a handful of
10 documents relating to [REDACTED]. Instead, Samsung's
11 invalidity contentions promised that Samsung would eventually produce such information once
12 an appropriate protective order was in place. (*Id.* at ¶ 5.) Before the parties had finalized their
13 final protective order, however, Samsung began producing source code in support of *its own*
14 patent infringement claims against Apple. (*Id.*) Specifically, Samsung made source code
15 available to show the conception and reduction to practice of the 3G patents that Samsung has
16 asserted against Apple. (*Id.*)

17 When asked to produce source code relevant to Apple's infringement allegations,
18 however, Samsung has dragged its feet. (*Id.* at ¶¶ 6-12.) On November 9, 2011, Apple wrote to
19 Samsung identifying specific categories of source code and other technical documents that it
20 urgently needed to prove its infringement allegations (and that should have been produced a
21 month earlier with Samsung's invalidity contentions). (*Id.* at ¶ 6.) Apple's letter asked Samsung
22 to immediately produce discrete categories of source code, each of which related to the operation
23 of one or more of the allegedly infringing features. Samsung has never denied that this evidence
24 is directly relevant to the accused features identified in Apple's infringement contentions.

25 During the parties' subsequent meet-and-confer session, Samsung promised to
26 immediately respond to Apple's November 9, 2011, letter. (*Id.* at ¶ 7.) She did not. Instead, on
27 November 20, six weeks after Samsung should have produced its source code and other technical
28 documents, counsel for Samsung wrote to Apple that it still needed to "confer with Samsung"

1 regarding the requested items. (*Id.*) Samsung claimed that it would “produce relevant source
2 code on a rolling basis,” but provided no excuse for its delay or assurance that it would produce
3 documents in a timely manner. (*Id.*)

4 Samsung’s unresponsiveness prompted Apple to again write to Samsung on
5 November 28, 2011, urgently requesting the immediate production of the source code and other
6 technical documents listed in its November 9 letter. (*Id.* at ¶ 9.) In this letter and during the
7 parties’ November 30 meet-and-confer session, Apple again expressed its urgent need to obtain
8 source code in sufficient time to review the code prior to the depositions of Samsung’s software
9 developers, in addition to informing the claim construction briefing occurring at the time. (*Id.*
10 at ¶ 10.) Although Samsung thereafter stated that: “we hope to make inspections available by
11 December 15, 2011” or would “let you know if such inspections are not possible on that date”—
12 those representations are not sufficiently firm commitments at this late stage. In an effort to more
13 carefully tailor the scope of what Apple needed on an expedited basis, Apple sent a narrowed
14 scope of requested categories on December 6. In light of the repeated failure of Samsung to
15 deliver on its assurances and produce any source code and other technical documents relevant to
16 Apple’s infringement allegations thus far, Apple, in a letter dated December 7, reiterated its need
17 for a written commitment. (*Id.* at ¶ 28.) Samsung refused to do so.

18 The Patent local rules in particular specifically reject Samsung’s position that it is entitled
19 to postpone the production of technical documents. Samsung’s non-compliance with the local
20 and Federal rules is unacceptable. *See Nova Measuring Instruments Ltd. v. Nanometrics, Inc.*,
21 417 F. Supp. 2d 1121, 1122 (N.D. Cal. 2006) (requiring Defendant to produce technical
22 documents pursuant to local rule 3-4(a)); *Nova Measuring Instruments Ltd. v. Nanometrics, Inc.*,
23 No. C 05-0986 MMC (BZ), 2006 U.S. Dist. LEXIS 68255 (N.D. Cal. Sept. 7, 2006) (noting that
24 the court later ordered a 30(b)(6) deposition of the custodian of technical documents);
25 *Cryptography Research, Inc. v. Visa Int’l Serv. Ass’n*, No. C04-04143 JW (HRL), 2005 U.S. Dist.
26 LEXIS 37013 (N.D. Cal. July 27, 2005) (ordering production of documents pursuant to Patent
27 L.R. 3-4).

1 Apple will be severely prejudiced if Samsung continues its delay tactics. The requested
2 documents will include thousands of lines of code as well as technical specifications that can only
3 be reviewed by a few experts with technical training. Apple needs sufficient time to review and
4 analyze the source code to take depositions of Samsung's technical witnesses effectively. Even
5 after these documents are produced, Apple will need time to review the code to determine if
6 Samsung's production is complete, or if further discovery is warranted. With the close of fact
7 discovery only three months away, Samsung's substantial completion of certain categories of
8 source code must occur right away.

9 **2. Apple Needs Evidence Regarding the Design History of Samsung's**
10 **Products Because This Evidence Relates to Several Issues.**

11 In the face of upcoming depositions of witnesses responsible for the design of Samsung's
12 products, Apple needs documents showing the design history of the Products at Issue. These
13 design history files, chronicling the evolution of Samsung's product design, would help show, for
14 example, whether Samsung altered its designs to more closely match Apple's design. These
15 documents would at minimum, in the short term, include the sketchbooks, physical models, and
16 computer-aided design ("CAD") files created in connection with the design of all Galaxy phone
17 and tablet products, whether they be final or alternative designs.

18 These materials are a central part of Apple's case and directly relevant to trade-dress
19 infringement, functionality, obviousness, and equitable issues. *See John H. Harland Co. v.*
20 *Clarke Checks, Inc.*, 711 F.2d 966, 977 (11th Cir. 1983) (copying evidence is relevant to trade
21 dress infringement); *Best Lock Corp. v. Ilco Unican Corp.*, 94 F.3d 1563, 1566 (Fed. Cir. 1996)
22 ("A design is not dictated solely by its function when alternative designs for the article of
23 manufacture are available."); *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 680 (Fed. Cir.
24 2008); *Avia Group Int'l, Inc. v. L.A. Gear California, Inc.*, 853 F.2d 1557, 1564 (Fed. Cir. 1988)
25 ("Copying is additional evidence of nonobviousness."); *Vandenberg v. Dairy Equip. Co., Div. of*
26 *DEC Int'l, Inc.*, 740 F.2d 1560, 1567 (Fed. Cir. 1984) ("The copying of an invention may
27 constitute evidence that the invention is not an obvious one."); *AC Aukerman Co. v. RL Chaides*
28 *Const. Co.*, 960 F. 2d 1020, 1045 (Fed. Cir. 1992) (finding that defendant's "copying should have

1 been deemed misconduct to be weighed into the court's decision" on estoppel). Once Samsung
2 produces these documents, Apple will need to determine which Samsung employees participated
3 in the analysis of Apple's products, and how their analysis affected Samsung's product decisions.
4 That in turn will require Apple to piece together the design history of nearly thirty accused
5 products. It will take a significant amount of time to conduct this analysis, especially since many
6 of Samsung's documents are in Korean and would need to be translated. Without immediate
7 access to the requested materials, Apple will not be prepared to depose Samsung's employees on
8 a key aspect of Apple's case. That would be especially damaging in this case because many of
9 Samsung's Korean deponents may not appear at trial.

10 **3. Apple Needs Evidence Regarding Samsung's Consideration of Apple**
11 **and Apple Products, As This Evidence Goes to the Core of the Case.**

12 Despite the fact that Apple's allegations of copying are a central part of Apple's case,
13 Samsung has shown similar reluctance to produce documents showing its analysis of Apple or
14 Apple products. Apple alleges that Samsung intentionally chose to use Apple's designs and
15 features in Samsung's own devices after witnessing the phenomenal success of Apple's iPhone
16 and iPad products. To confirm these allegations, Apple seeks evidence showing that Samsung
17 kept close track of Apple and Apple's products. It also seeks to piece together the design
18 evolution of Samsung's phones to determine when and how Samsung veered its product designs
19 towards Apple's.

20 In its Opposition to Apple's preliminary injunction motion, Samsung tried to downplay its
21 culpability in using Apple's designs by asserting that it did not copy them. According to
22 Samsung, smartphone and tablet designs "naturally evolved in the direction" of Apple's designs.
23 (*See Samsung's Opposition to Apple's Motion for a Preliminary Injunction*, filed under seal on
24 August 22, 2011, at 1-2.) During the hearing on Apple's first preliminary injunction motion,
25 Samsung claimed that Apple was looking for documents that simply did not exist.

26 The few documents Samsung has produced tell a different story. [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

Significantly, this document was produced weeks after Samsung had confirmed that it had completed its production of “any responsive documents that might exist after a reasonable search” in response to Apple’s Request for Production Number 1, which specifically requests these types of documents. Again, evidencing Samsung’s reluctance to meet its discovery obligations.

Samsung has clearly not completed its production of these types of documents. Samsung’s production pursuant to the September 28, 2011, Order was limited to the four Samsung products and one accused feature at issue in the preliminary injunction motion. Even assuming that this production is complete (and it is not), Samsung still needs to search for documents related to more than 20 other accused products and seven other accused features.

Apple has written to Samsung multiple times, noting Samsung’s lack of compliance with the Court’s September 28, 2011, Order and asking Samsung to do a complete search of its files for these materials. Specifically, Apple has repeatedly asked Samsung to search its development, design, and marketing files (including files for development groups, R&D management groups, product strategy teams, product planning groups, and product testing groups) for documents mentioning Apple or its products.² Samsung has not yet agreed to Apple’s requests to substantially complete its production of these documents in a time frame that addresses Apple’s urgent needs.

² Search terms should be run on the central or custodial files from customer survey, R&D management, product planning, product strategy, or software or product verification groups. (Chung Decl. at ¶ 20.)

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4. Apple Needs Survey Evidence to Depose Marketing Witnesses.

For the same reasons discussed above, Apple needs as yet unproduced survey and marketing evidence to depose several Samsung witnesses involved in the marketing and producing planning of the Products at Issue. Moreover, the court ordered Samsung to produce these documents in its September 28, 2011, order.

V. CONCLUSION

Here, the case is on an expedited schedule, and it is imperative that at this stage, with only three months remaining, that Apple begin receiving documents—on a rolling basis—from Samsung. To guide Samsung’s efforts, Apple has identified the specific categories that it most urgently needs to conduct its case and prepare for the impending depositions of 37 Samsung witnesses. Apple has repeatedly requested that Samsung commit to substantially completing its production of this limited scope of documents for specified dates certain in December 2011. Samsung refused to do so. At this late stage, it is no longer acceptable for Samsung to continue withholding documents.

For these reasons, Apple respectfully requests that the Court GRANT Apple’s Motion to Compel and order the relief requested in Apple’s Proposed Order submitted herewith.

Dated: December 8, 2011

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