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14

15   UNITED STATES DISTRICT COURT

16   NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

17 APPLE INC., a California corporation,   CASE NO. 4:11-cv-01846-LHK

18   Plaintiff,   **SAMSUNG'S OPPOSITION TO APPLE'S**
                                                   MOTION TO SHORTEN TIME FOR
19   vs.   **BRIEFING AND HEARING ON APPLE'S**
                                                   MOTION TO COMPEL PRODUCTION
20 SAMSUNG ELECTRONICS CO., LTD., a   **OF DOCUMENTS AND THINGS**
    Korean business entity; SAMSUNG
21 ELECTRONICS AMERICA, INC., a New   Date: December 16, 2011
    York corporation; SAMSUNG   Time: 10:00 a.m.
22 TELECOMMUNICATIONS AMERICA,   Place: Courtroom 5, 4th Floor
    LLC, a Delaware limited liability company,   Judge: Hon. Paul S. Grewal
23
                Defendants.
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                                                              Case No. 4:11-cv-01846-LHK
    SAMSUNG'S OPPOSITION TO APPLE'S MOTION FOR ADMINISTRATIVE RELIEF

PRELIMINARY STATEMENT

Apple fails to demonstrate any urgency that necessitates a shortened schedule here. Its motion is based entirely on an arbitrary and impossible deadline—December 15, 2011[1]—that Apple suddenly set for Samsung's production of several broad categories of documents about a week ago.

Prior to filing its motion to compel, Apple refused to meet and confer regarding the grounds for its urgency, citing baseless reasons and claiming that it did not have to justify its position. (Chan Decl. ¶ 3.) When Samsung stated it would make a good-faith effort to expedite and produce the requested documents by the requested deadline, Apple claimed Samsung also needed to provide a detailed audit report of its search efforts. (*Id.*) Even when Samsung agreed to make a substantial production of all the requested materials, on a rolling basis, by January 6 (Chan Decl., Ex. 1.), Apple never explained why the three weeks' difference mattered and filed its motion even though it had not complied with the lead counsel meet-and-confer requirement.

Apple knew a motion to compel on these materials right now was unnecessary and unreasonable. And it knew its arbitrary December 15 demand would likely not survive a lead counsel meet and confer, so it skipped the rules to file its baseless motion. There is no legitimate dispute here. Samsung has already agreed to produce these materials on an expedited schedule that will get Apple the documents in plenty of time for their use at depositions, and Apple cites no other reason why it wants or needs an expedited schedule. There is no reason to grant Apple's motion to shorten time.

ARGUMENT

I. APPLE REFUSES TO CONDUCT AN IN-PERSON MEET AND CONFER

Apple prematurely seeks to file a motion to compel immediate production of documents, but has refused to engage in any meaningful meet and confer regarding the urgency of such documents. For many of the requests for technical documents cited in Apple's motion to compel, the parties have never had the opportunity to discuss the scope and breadth of such requests, much

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[1] In its motion, Apple now seeks such documents by December 23, 2011.

1 less through lead counsel. In fact, Apple has clearly stated that it was not required to so meet and

2 confer—"Apple is not required to justify its reasons for needing certain categories of documents

3 on an expedited basis" (Chan Decl. ¶ 3)—and thus has refused to provide further explanation for

4 its alleged expedited need. Samsung cited the Court's rules and made its lead counsel available for

5 an in-person meet and confer as soon as he is available, on December 19, 2011.[2] (Dkt. No. 436-4.)

6 Even considering Apple's arguments in its motion for leave from the lead counsel in-person meet

7 and confer requirement, Apple has offered no reason why it failed to conduct any kind of meet and

8 confer between lead counsel before filing its motion.

9 **II.   APPLE CAN IDENTIFY NO PREJUDICE, SINCE SAMSUNG HAS AGREED TO**

10 **PRODUCE THE REQUESTED MATERIALS BY JANUARY 6, 2012**

11   Apple's Motion to Shorten Time merely states that the documents it seeks are "the core of

12 Apple's case, and it is critical that Apple receive them well before January 2012," but it does not

13 explain why a production by January 6, 2012 would cause it any harm. (D.N. 464 at 2.) In fact,

14 Apple has not made any showing of prejudice that would result if Samsung were unable to

15 practically complete production by December 15, 2011 or Apple's newly proposed deadline of

16 December 23, 2011, much less articulated any reason it would be prejudiced unless this motion for

17 shortened time is granted. Apple also fails to cite any reason why the regular briefing schedule

18 would be insufficient to address their concerns, especially since Samsung has already agreed to

19 produce responsive documents that may moot Apple's motion, and Apple could discuss any

20 perceived deficiencies at a hearing in January.

21   What Apple cites as urgent is simply not so. Apple cites the fact that it has noticed the

22 depositions of dozens of Samsung's designers and other personnel, and hopes to take them in

23 January 2012. (D.N. 464 at 2.) However, the parties have yet to determine a schedule or location

24 for these depositions, and Apple provides no reason why nearly the entirety of Samsung's

25 _____

26   [2] Mr. Verhoeven will be in Washington, D.C. conducting a trial until December 19. To
   accommodate Apple, Samsung offered to stipulate to a proposal seeking relief from the in-person

27 lead counsel requirement so long as it would apply to both sides, so that it too could move forward
   on pending discovery issues, but Apple refused. (Dkt. No. 463-6.)

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SAMSUNG'S OPPOSITION TO APPLE'S MOTION FOR ADMINISTRATIVE RELIEF

production of the documents must occur by December 23, 2011, or why Samsung's agreement to

produce source code and design and marketing documents by January 6, 2012 results in any harm.

While parties must have reasonable time to prepare for depositions, Apple has not identified any

reason why it would be prejudiced by Samsung's proposals or by the Court's regular briefing

schedule, and as such, its motion must be denied. *Competitive Techs., Inc. v. Fujitsu Ltd.*, 333 F.

Supp. 2d 858, 862 (N.D. Cal. 2004) (Motion to Shorten Time moot if court's normal briefing

schedule does not prejudice a party).[3]

CONCLUSION

For the foregoing reasons, Samsung respectfully requests that the Court deny Apple's

Motion for Shortened Time. In the alternative, Samsung requests the Court set the date for

Samsung's opposition as December 14, 2011, with no reply, and the hearing for December 16,

2011.

DATED: December 9, 2011   QUINN EMANUEL URQUHART &
                                       SULLIVAN, LLP

                                       By /s/ Victoria F. Maroulis
                                          Charles K. Verhoeven
                                          Kevin P.B. Johnson
                                          Victoria F. Maroulis
                                          Michael T. Zeller
                                          Attorneys for SAMSUNG ELECTRONICS
                                          AMERICA, INC., and SAMSUNG
                                          TELECOMMUNICATIONS AMERICA, LLC

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[3] Tellingly, when Samsung asked Apple to agree to the production of similar categories of documents by the same deadline, Apple gave no conclusive agreement to do so. Apple wants the Court to set an arbitrary deadline—one that Apple believes should only apply to Samsung.