

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

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

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

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

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

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

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

**APPLE’S OPPOSITION TO  
 SAMSUNG’S ADMINISTRATIVE  
 MOTION FOR RELIEF REGARDING  
 LEAD COUNSEL MEET AND  
 CONFER REQUIREMENT**

Judge: Hon. Lucy H. Koh

1 Apple respectfully opposes Samsung’s request for relief from the “lead trial counsel . . .  
2 meet and confer” requirement of the Court’s Minute Order and Case Management Order [D.N.  
3 187] (“CMC Order”). In its CMC Order, the Court required that the parties’ lead counsel meet  
4 and confer in person before filing a discovery motion. Apple’s lead trial counsel is available for  
5 the in-person meet and confer *tomorrow* and has stated as much, but Samsung has declined this  
6 offer. Samsung simply cannot show that it has made any good-faith effort to comply with the  
7 Court’s requirement.

8 ***Samsung’s Previous Refusal to Meet and Confer on Apple’s Issues.*** As Apple explained  
9 in its own administrative motion last week, Apple has been trying to schedule a lead trial counsel  
10 meet and confer with Samsung since at least November 30, 2011. (*See* Declaration of Michael  
11 Jacobs in Support of Apple’s Administrative Motion for Temporary Relief Regarding Lead  
12 Counsel Meet and Confer Requirement (“Jacobs Decl.”) at ¶ 5.) The purpose of the meeting was  
13 to address *both parties’* outstanding discovery issues. (*Id.* at ¶ 3, 5.)

14 On November 30, 2011, Apple proposed December 5, 6, or 7, 2011 for this meeting. (*Id.*  
15 at ¶ 5.) Apple explained that scheduling this meeting was urgent, as it would be difficult to have  
16 the parties’ discovery disputes heard before the end of the year if this meeting did not occur  
17 immediately. (*Id.* at ¶ 7.)

18 Apple’s first request for this meeting was met with silence. (*Id.* at ¶ 5.) Accordingly, on  
19 December 2, 2011, Apple’s lead counsel reached out to Samsung’s lead counsel directly to try to  
20 schedule this meeting. (*Id.* at ¶ 8.) Apple’s lead counsel again explained that the meet-and-  
21 confer session was intended to address *both parties’* issues, and he reiterated his willingness to  
22 meet at any time on December 5, 6, or 7, 2011. (*Id.* at ¶ 8.)

23 When Samsung’s lead counsel finally responded on December 3, 2011, he explained that  
24 he was in the middle of a trial on the East Coast and thus unavailable for an in-person meeting  
25 before December 19, 2011. (*Id.* at ¶ 9.) Upon learning of this, Apple’s lead counsel proposed  
26 that the parties seek the Court’s leave to conduct the meet and confer telephonically. This was  
27 because—as he explained to Samsung’s lead counsel—Apple’s lead counsel was about to depart  
28

1 for Tokyo on Friday, December 9, 2011, and would himself have limited availability after that  
2 date. (*Id.* at ¶ 8, 9.)

3 But despite repeated follow-up requests via e-mail, letters, and teleconference, Samsung  
4 never identified any dates before December 19, 2011, for its lead counsel’s availability (whether  
5 in-person or by phone). (*Id.* at ¶¶ 7, 9, 12–14.) Apple thus was forced to seek temporary, limited  
6 relief from the Court’s meet-and-confer requirement on December 8, 2011, for its motion to  
7 compel.

8 The Court granted Apple’s requested relief on December 9, 2011, and Judge Grewal  
9 granted Apple’s motion to shorten time on its motion to compel later that same day. Per Judge  
10 Grewal’s order shortening time, Samsung’s opposition is due on Wednesday, December 14, 2011,  
11 and the hearing is scheduled for Friday, December 16, 2011.

12 ***Samsung’s Sudden Availability to Meet and Confer on Its Own Discovery Issues.*** Only  
13 after the Court granted Apple temporary relief from the in-person meet-and-confer requirement  
14 did Samsung express any interest in scheduling an immediate meet and confer. On Saturday,  
15 December 10, 2011, at 3:25 p.m. Pacific time, Samsung e-mailed Apple to demand a telephonic  
16 lead trial counsel meet-and-confer ***less than 24 hours later***, at 2 p.m. Pacific time on Sunday,  
17 December 11. (*See* Declaration of Mia Mazza in Support of Apple’s Opposition to Samsung’s  
18 Administrative Motion for Relief Regarding Lead Counsel Meet and Confer Requirement  
19 (“Mazza Decl.”), ¶ 2 & Ex. A.) Samsung proposed this time even though it knew that Apple’s  
20 lead counsel had already left for Tokyo and the proposed time corresponded to early morning  
21 Tokyo time.

22 Apple responded to Samsung’s sudden, allegedly urgent request to meet and confer by  
23 noting that the time difference made such a meet and confer difficult. (*Id.* ¶ 3 & Ex. B.) Apple  
24 offered, however, to make its lead trial counsel available for the in-person meet and confer on  
25 Tuesday, December 13, 2011, within hours of his flight’s landing in the Bay Area. (*Id.*)

26 Rather than accept Apple’s offer, Samsung informed Apple that it would be seeking relief  
27 from the Court’s meet-and-confer requirement. (*Id.* ¶ 4 & Ex. C.) As of the filing of this  
28 opposition, Samsung has never offered a single time for its availability to meet and confer on its

1 own discovery issues besides its proposal of 7 a.m. Tokyo time on December 11, 2011, or its  
2 prior proposal of December 19, 2011.

3 Samsung's gamesmanship in dodging Apple's own meet and confer requests—but then  
4 demanding a middle-of-the-night meet and confer and rejecting an in-person meeting less than 24  
5 hours from now—is plain. Samsung cannot demonstrate that it has made good-faith efforts to  
6 satisfy the Court's requirement—a requirement intended to reduce the parties' discovery disputes.  
7 Apple's trial counsel is available tomorrow. Both in view of its gamesmanship and its failure to  
8 comply (or try to comply) with the Court's requirement, Samsung's motion for administrative  
9 relief should be denied.<sup>1</sup>

10 Dated: December 13, 2011

MORRISON & FOERSTER LLP

11 By:  /s/ Michael A. Jacobs  
12 Michael A. Jacobs

13 Attorneys for Plaintiff  
14 APPLE INC.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25 \_\_\_\_\_  
26 <sup>1</sup> Samsung's haste to move to compel without meeting and conferring is plain. On the  
27 morning of December 12, 2011, Samsung's counsel wrote to Apple's counsel indicating  
28 Samsung's intent to move on just one issue—its “second motion to compel” regarding Itay  
Sherman. (Mazza Decl. ¶ 4 & Ex. C.) Samsung's concurrently filed motion to compel seeks far  
greater relief, however.