

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  
 TELECOMMUNICATIONS AMERICA,  
 25 LLC, a Delaware limited liability company,  
 Defendants.

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

**APPLE'S CORRECTED  
 OPPOSITION TO SAMSUNG'S  
 MOTION TO SHORTEN TIME**

Judge: Hon. Paul S. Grewal

1 Apple opposes Samsung's Motion to Shorten Time for Briefing and Hearing. Samsung's  
2 Motion to Shorten Time, filed at 11:37 p.m. on Monday, December 12, 2011, seeks a briefing  
3 schedule that would require Apple to file its opposition to *two* separate discovery motions within  
4 48 hours. After failing to make a good-faith effort to satisfy the Court's meet-and-confer  
5 requirement, and then misrepresenting to Apple that only one, limited motion would be filed on  
6 Monday, Samsung should not be rewarded with a compressed schedule that would prejudice  
7 Apple.

8 **Samsung Intentionally Delayed Meeting and Confering.** On Thursday,  
9 December 8, 2011, Apple filed a Motion to Compel Production of Documents and Things  
10 (Dkt. 467), along with an Administrative Motion for Relief (Dkt. 463) from the "lead trial  
11 counsel . . . meet and confer" requirement in Judge Koh's case management order. Apple filed  
12 the Administrative Motion because ***Samsung had refused to agree to a meeting of lead counsel***  
13 ***to discuss Apple's issues on December 5, 6, or 7, 2011***, and instead had represented that  
14 Samsung's lead counsel was unavailable to meet and confer until December 19, 2011. (*See*  
15 Declaration of Mia Mazza in Support of Apple's Opposition to Samsung's Motion to Shorten  
16 Time, filed herewith ("Mazza Decl."), ¶ 6.) Judge Koh granted Apple's Administrative Motion  
17 on December 9, 2011. (Dkt. 472.) This Court then granted Apple's Motion to Shorten Time on  
18 the briefing and hearing schedule for its Motion to Compel, setting the hearing on  
19 December 16, 2011, with Samsung's opposition brief due on Wednesday, December 14.  
20 (Dkt. 477.)

21 On Saturday, December 10, 2011, Samsung's lead counsel was suddenly available to meet  
22 and confer on Samsung's own discovery issues. (Mazza Decl., ¶ 3 & Ex. B.) Samsung  
23 demanded that Apple's lead counsel meet and confer less than 24 hours later, on Sunday morning,  
24 even though Samsung was well aware that Apple's lead counsel had left for Tokyo on Friday,  
25 December 9. (*Id.*) Apple advised Samsung that its lead counsel would be arriving back in San  
26 Francisco on Tuesday, December 13, 2011, and that he would make himself available on that date  
27 starting after noon. (*Id.*)  
28

1 Samsung did not respond to this offer. Instead, on Monday morning, December 12, 2011,  
2 Samsung advised Apple that it was going to file a discovery motion later that day, and asked  
3 Apple whether it would oppose: (1) Samsung's administrative motion for relief from Judge  
4 Koh's meet-and-confer requirement and (2) Samsung's motion to shorten time. (Mazza Decl.,  
5 ¶ 2 & Ex. A.) In that communication, Samsung represented that it was filing only a motion  
6 related to the disclosure of Apple documents to Samsung's expert, Itay Sherman. (*Id.*) Samsung  
7 never mentioned that it would be filing a second discovery motion, aimed at a variety of different  
8 document production issues. (*Id.*)

9 **Samsung's Schedule is Unnecessarily Compressed and Would Prejudice Apple.**

10 Samsung's current motion is entirely retaliatory. The Court granted Samsung nearly a full  
11 week to prepare its opposition to the motion to compel filed by Apple on Thursday,  
12 December 8, 2011. Samsung's two motions raise a far broader scope of issues than Apple's  
13 motion, and yet Samsung asks this Court to require that Apple respond to Samsung's motions in a  
14 fraction of the time. Samsung argues that it had to "match the briefing schedule set by the Court  
15 with respect to Apple's motion," but the proposed briefing schedule, which would provide Apple  
16 with two days, instead of the six afforded to Samsung, does not come close to "matching" the  
17 schedule this Court provided to Samsung. It would be prejudicial to require Apple to prepare and  
18 file oppositions to *two separate discovery motions*, each dealing with complex issues of  
19 importance, within 48 hours.

20 Samsung's stated reasons for needing to have its motions heard on shortened time do not  
21 withstand scrutiny. First, Samsung argues that if its motions were not heard on shortened time it  
22 would "depriv[e] Samsung of information it needs for its claim construction briefing due on  
23 December 22, 2011." (Mot. at 2.) Samsung provides no explanation for this assertion; indeed,  
24 Samsung itself admits that almost all of the requests relate to design patents, ***which are not the***  
25 ***subject of claim construction briefing at all.*** If Samsung *had* needed the requested documents  
26 for claim construction briefing on December 22, surely it would have joined Apple in its attempts  
27 to conduct a lead counsel meet and confer during the week of December 5, and it would have then  
28 filed a motion, if needed, last week. In any event, Samsung asked Apple to produce a specific set

1 of filings and transcripts from the *Motorola* case for purposes of claim construction, and Apple  
2 produced those documents – nearly a thousand documents – on November 23, 2011. (Mazza  
3 Decl., ¶ 7.) Samsung informed Apple on December 11, 2011, that it could not locate four items  
4 in this production, and Apple has agreed to produce those items as quickly as possible if they  
5 were not already produced. (*Id.*)

6 Second, Samsung argues that if its motions were not heard on shortened time it would  
7 deprive Samsung of opportunities to conduct “follow-on discovery” that will “allow it to prepare  
8 for further depositions and other events in the case.” (Mot. at 2.) This assertion only highlights  
9 the fact that Apple has already produced the core documents Samsung needs to defend its case –  
10 more than a million pages of documents, alongside numerous physical models, prototypes, CAD  
11 files, native source code, and similar items. The documents Samsung seeks *are* “follow-on  
12 discovery.” Nevertheless, Apple has already agreed to produce most of the documents and other  
13 information sought by Samsung in its “follow-on” requests. (Mazza Decl. ¶ 7.)

14 Third, Samsung argues that if its motions were not heard on shortened time it would  
15 “prevent[] Samsung’s expert, Itay Sherman, from seeing confidential documents needed for him  
16 to prepare his expert analysis and report.” Samsung and Apple, however, reached impasse on this  
17 issue *no later than November 1, 2011*, and yet Samsung failed to file any motion on the issue  
18 until now. Samsung’s own delay in raising this issue is not a valid reason to burden Apple with a  
19 last-minute scramble to file opposition papers, let alone the additional burden this will place on  
20 the Court to review and analyze this issue along with the others already on calendar for the  
21 upcoming hearing.<sup>1</sup>

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22  
23 <sup>1</sup> As a further argument in support of its motions being heard on shortened time, Samsung  
24 notes that “the Court is already hearing discovery motions on the date proposed by Samsung.”  
25 (Mot. at 2.) The fact that Apple has brought a valid discovery motion (not “motions”) on  
26 shortened time, after making an exhaustive, good-faith effort to meet and confer on the relevant  
27 issues (as confirmed by Judge Koh’s December 9, 2011, Order), does not provide a basis for  
28 Samsung to cram last-minute discovery disputes into the schedule as well. This is particularly the  
case here, where Samsung has failed to make a good-faith effort to make its lead counsel  
available to meet and confer on the issues raised in its motion, in violation of Judge Koh’s case  
management requirements. (*See Apple’s Opposition to Samsung’s Administrative Motion for  
Relief from Lead Counsel Meet and Confer Requirement*, filed concurrently herewith on the  
morning of December 13, 2011 (Dkt. 484).)

1 Samsung's gamesmanship is compounded by a bait-and-switch on the scope of its motion.  
2 On Monday morning, Samsung informed Apple that it would be filing a motion on the parties'  
3 dispute relating to *Itay Sherman*. (Mazza Decl. ¶ 2 & Ex. A.) Samsung's filings late Monday  
4 night, however, contain a second motion, seeking to compel production of a panoply of various  
5 "follow-on" documents and things. Samsung failed to disclose its intent to file this second  
6 motion to Apple in its Monday-morning communications. (*Id.*)

7 Responding to Samsung's motions requires time – time from outside counsel and time  
8 from Apple to review and approve the representations that will be made in the opposition.  
9 Requiring Apple to file its response within a 48-hour period would be prejudicial because it  
10 would force Apple to choose between being unnecessarily vague in its response or filing a  
11 detailed response that may not be fully vetted. Samsung argues that the parties "have been  
12 negotiating these issues for weeks and Apple is already well aware of the basis for [Samsung's]  
13 motions." (Mot. at 2.) This is untrue. Apple does not understand why Samsung is filing a  
14 motion to compel. Although the parties have been discussing many of the issues in Samsung's  
15 motion to compel for several weeks in regular meet-and-confer calls, Apple is not aware of the  
16 basis for Samsung's motion, as it has already agreed to produce nearly everything Samsung seeks  
17 therein. Regardless, Samsung's insistence that its discovery issues are ripe is inconsistent with its  
18 own prior conduct. If the issues were truly well-defined, as Samsung claims, it would have  
19 agreed to Apple's repeated requests for a lead trial counsel meet and confer during the week of  
20 December 5, 2011, or it would have joined Apple's Administrative Motion for Relief from the  
21 lead trial counsel meet-and-confer requirement last week. It did neither.

22 Apple is more than willing to respond to Samsung's motion on shortened time – but this is  
23 far too short. Setting a hearing on Samsung's motion during the last week of December or first  
24 week of January would allow Apple adequate time to: (1) prepare a response; (2) vet the  
25 response with all of the affected individuals; and (3) *moot* most of the issues in Samsung's  
26 motion prior to the hearing by *producing* documents and things as Apple has *already agreed* it  
27 will do.  
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For the foregoing reasons, Apple requests that Samsung’s motion be denied in part and that a reasonably accelerated schedule be set with a hearing during the last week of December or first week of January.

Dated: December 13, 2011

MORRISON & FOERSTER LLP

By:           /s/ Richard S.J. Hung            
Richard S.J. Hung

Attorneys for Plaintiff  
APPLE INC.