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15	NORTHERN DISTRICT	OF CALIFC)RNIA
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	SAN JOSE D APPLE INC., a California corporation,	IVISION	1-cv-01846-LHK (PSG)
16		VISION Case No. 1 APPLE'S	1-cv-01846-LHK (PSG) OPPOSITION TO
16 17	APPLE INC., a California corporation,	VISION Case No. 1 APPLE'S	1-cv-01846-LHK (PSG)
16 17 18	APPLE INC., a California corporation, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., a	VISION Case No. 1 APPLE'S SAMSUN	1-cv-01846-LHK (PSG) OPPOSITION TO G'S MOTION TO COMPEL
16 17 18 19	APPLE INC., a California corporation, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., a Korean corporation; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; and	VISION Case No. 1 APPLE'S SAMSUN Date: Time:	1-cv-01846-LHK (PSG) OPPOSITION TO G'S MOTION TO COMPEL December 16, 2011 10:00 a.m.
16 17 18 19 20	APPLE INC., a California corporation, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., a Korean corporation; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability	VISION Case No. 1 APPLE'S SAMSUN Date: Time: Place:	1-cv-01846-LHK (PSG) OPPOSITION TO G'S MOTION TO COMPEL December 16, 2011
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1	INTRODUCTION
2	Samsung's motion to compel is a knee-jerk and needless reaction to Apple's own motion.
3	Apple has already produced or agreed to produce most of the categories of documents sought in
4	Samsung's motion. Other categories sought by Samsung's motion are ill-defined, yet Apple has
5	agreed to do what could reasonably be done to respond to these requests. Attempting to gin up
6	controversies, Samsung has wasted the Court's time on unnecessary issues. Indeed, the
7	manufactured issues raised by Samsung's motion actually confirm the fact that Apple's
8	production to date—consisting of more than a million pages—has provided the key information
9	needed by Samsung to prepare its defense. Apple's motion, by contrast, asks the Court to remedy
10	the fact that Samsung has yet to produce the core documents Apple needs to conduct depositions
11	and litigate its case going forward. Samsung's motion to compel should be denied.
12	ARGUMENT
13	I. APPLE HAS PRODUCED AN ENORMOUS VOLUME OF DOCUMENTS,
14	SOURCE CODE, CAD, MODELS, AND OTHER ITEMS.
15	Samsung's motion is made up of a list of miscellaneous "follow-on" requests, reflecting
16	the substantial coverage of Apple's core production of documents and things to date. Since the
17	Preliminary Injunction hearing on October 13, Apple has produced well over a million pages of
18	documents in the Northern District of California offensive action alone. (Mazza Decl. \P 2.) In
19	addition, Apple has produced for inspection numerous CAD files, native and printed source code
20	files, Director files on a computer capable of viewing them, and the models and prototypes
21	requested by Samsung in connection with its depositions of Apple inventors. (Id.) Samsung also
22	deposed 17 Apple patent prosecutors in the month of October 2011, and 31 Apple inventors in the
23	months of October and November 2011. (Id.)
24	By contrast, since the Preliminary Injunction hearing, Samsung's total production in the
25	Northern District of California offensive action has been about 650 documents, totaling less than
26	29,000 pages. (Mazza Decl. \P 3.) About 22,000 of those pages were produced in the past week.
27	(Id.) Samsung has refused to schedule 36 of the 37 depositions of Samsung witnesses that Apple
28	
I	APPLE'S OPPOSITION TO SAMSUNG'S MOT. TO COMPEL CASE NO. 11-CV-01846-LHK (PSG) 4 sf-3083332

noticed before and shortly after Thanksgiving. (*Id.*) (Samsung offered a date for its first witness just last night. (*Id.*))

Despite the imbalance between the parties' respective productions for Apple's offensive
case, Apple has actively continued to collect, process, review, and produce documents for its
rolling production. And even though Samsung has deposed literally dozens of Apple witnesses
but declined to make its witnesses available for deposition, Apple has dutifully chased down
Samsung's various "follow-on" requests from the depositions of its inventors and prosecutors.
Apple has also aggressively pursued Samsung's newly raised requests for documents, such as its
November 2011 requests for various items of alleged prior art.

Samsung's sudden imposition of deadlines in its motion to compel is the first time
Samsung ever requested production by a specific date. (Mazza Decl. ¶ 4.) As recently as the
parties' December 7, 2011, meet-and-confer call, Samsung specifically declined to set any
production deadlines. (*Id.*) Samsung instead stated that it was sufficient that Apple was working
diligently to search for and produce the requested information. (*Id.*)

In view of Apple's diligence in responding to Samsung's miscellaneous "to-do" list,
Samsung needed to manufacture deadlines for its motion or it would have little to say. To be
clear, unlike Apple's motion, Samsung's motion does not seek core documents that it needs
urgently to advance its defenses. Many of the requested items are 10 to 20 years old and have
been difficult to track down.

20 21

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II. APPLE HAS ALREADY PRODUCED OR AGREED TO PRODUCE MOST OF THE ITEMS SAMSUNG'S MOTION DEMANDS.

In addition to the million pages of documents, and the models, prototypes, source code,
CAD files, and Director files that Apple has already produced, Apple has either produced or has
committed to producing most of the information Samsung seeks in its motion to compel.

25

26

A. Apple Has Already Produced Several of the Items Samsung Seeks

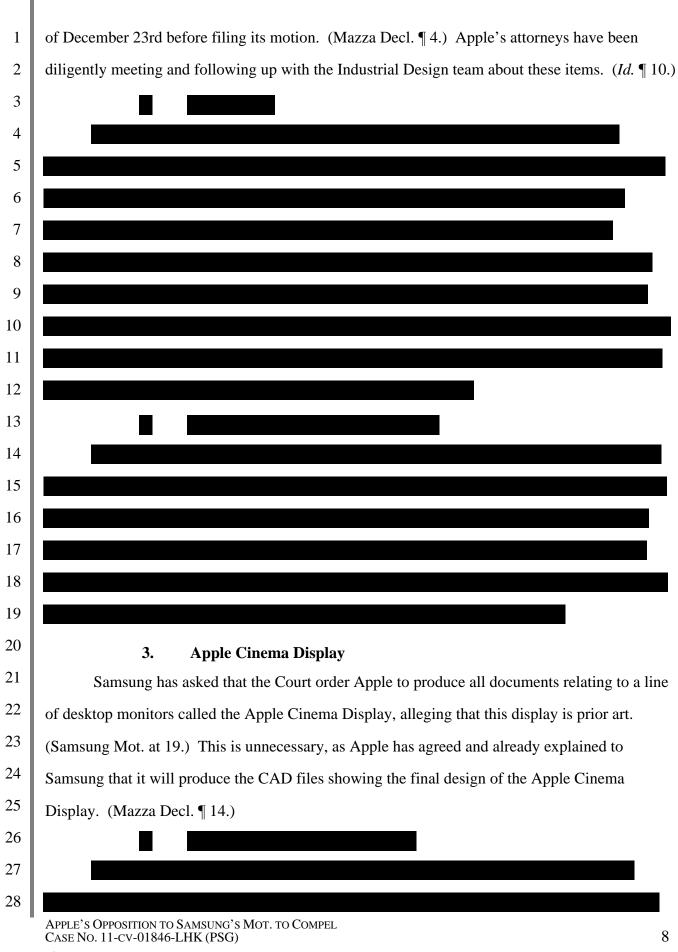
Several of the categories of documents Samsung requests in its motion to compel have

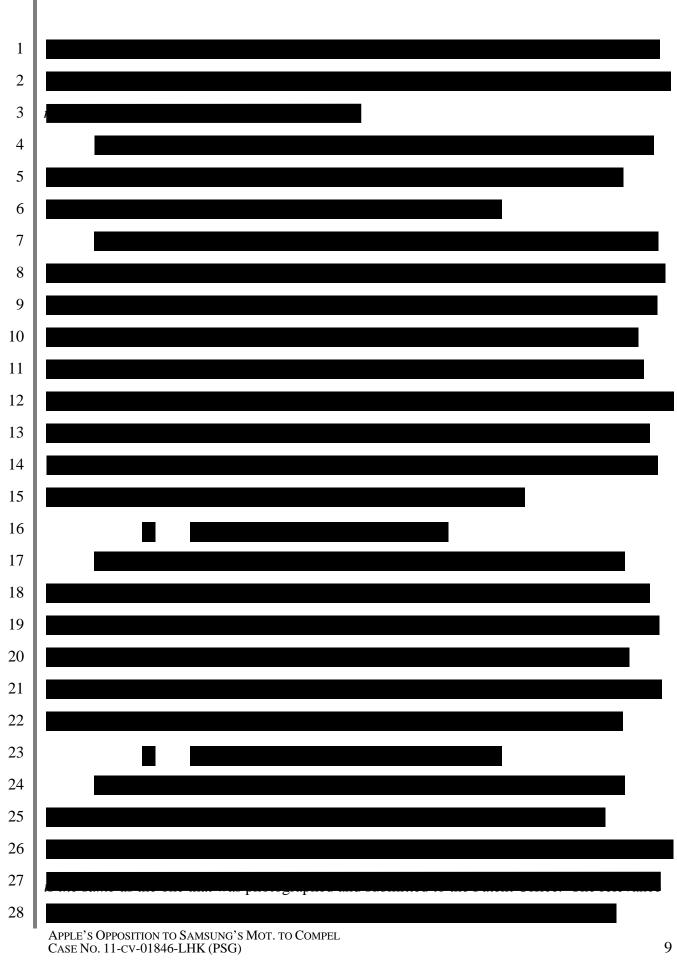
27 already been produced, underscoring the hastiness of Samsung's motion. For example, Samsung

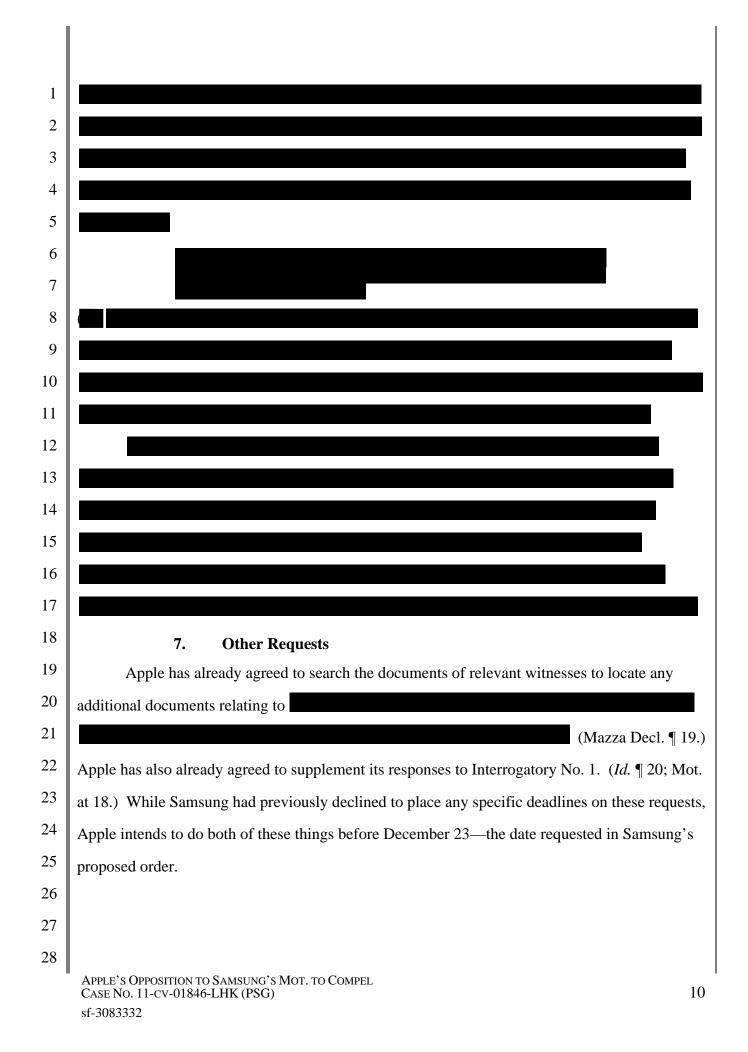
28 seeks the production of pleadings, briefs, discovery, and transcripts from *Apple v. Motorola* Apple's Opposition to Samsung's Mot. to Compel CASE NO. 11-CV-01846-LHK (PSG)

1	actions in the ITC and the Western District of Wisconsin. (Samsung Mot. at 4-5.) Apple already		
2	produced those materials, however-totaling more than 45,000 pages-on November 23, 2011,		
3	and December 1, 2011. (Mazza Decl. ¶ 5.)		
4	The four alleged deficiencies that Samsung identified in its December 11, 2011, letter do		
5	not, in fact, exist. In particular:		
6	• "[ITC] Staff's pre-hearing hearing brief" (Samsung Mot. at 5 n.5): Apple located		
7	and produced this brief immediately after receiving Samsung's December 11, 2011		
8	letter. (Mazza Decl. ¶ 6.)		
9	• "John Elias' witness statement, testimony and cross-examination" (Samsung Mot.		
10	at 5 n.5): Apple did not submit a witness statement for Mr. Elias, and he did not		
11	testify at any hearings in the <i>Motorola</i> cases. (Mazza Decl. \P 6.)		
12	• "Jeffrey Brown's witness statement, testimony and cross-examination" (Samsung		
13	Mot. at 5 n.5): Mr. Brown's statement and testimony contain substantial		
14	confidential information of third party (Mazza Decl. \P 6.)		
15			
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21	• "Martin Simmons' witness statement" (Samsung Mot. at 5 n.5): Like Jeffrey		
22	Brown's testimony, Mr. Simmons' testimony contains Confidential Business		
23	Information that will require consent to produce. (Mazza Decl. \P 6.)		
24	Samsung also asserts that Apple "produced only a redacted copy" of a document		
25	containing confidential business information of Apple and two third parties. (Samsung Mot. at 5		
26	n.5.) As soon as Samsung brought those redactions to Apple's attention, however, Apple		
27	produced a version that redacted the confidential business information of Apple. Apple did so		
28	last week, before Samsung's motion to compel was filed. (Mazza Decl. \P 5.) Accordingly, Apple		
	APPLE'S OPPOSITION TO SAMSUNG'S MOT. TO COMPEL CASE NO. 11-CV-01846-LHK (PSG)6sf-3083332		

1	has already met all of Samsung's demands in this first category, to the extent possible within the
2	limits of the ITC protective order governing the Motorola investigation.
3	
4	
5	
6	Apple produced the
7	photographs— without any confidentiality designation— last week, before Samsung filed its
8	motion. (Mazza Decl. ¶ 5.)
9	B. Apple Will Have Substantially Completed Its Production of Several Other
10	Items by December 15, 2011
11	As of the date of the hearing, Apple will have already produced at Morrison & Foerster's
12	Palo Alto office the following items for Samsung's inspection:
13	• An Apple computer specially configured and adapted to run the 10 year old Mac
14	OS 10.0 operating system.
15	• Portions of the Mac Operating System 10.0 and 10.1 source code believed to relate
16	to the functions described in Samsung's motion.
17	• Portions of the Mac Operating System 7.5—more than 15 years old—source code
18	believed to correspond to the
19	
20	(Mazza Decl. ¶ 9.) Apple informed Samsung no later than the parties' December 7, 2011 meet-
21	and-confer call that it planned to make this production by December 15th, (<i>id.</i> \P 8), but Samsung
22	moved to compel on these issues anyway.
 C. Apple Has Agreed to Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible and Has Been Diligently Working to Locate and Produce Most of the Other Items As Que Possible As Q	
	Possible and Has Been Diligently Working to Locate and Produce Them
25	Apple has also been working on producing a large number of other items on Samsung's
26	list as quickly as possible. None of these items relate to the upcoming Markman proceedings.
27	And confirming the retaliatory nature of Samsung's motion, Samsung never suggested a deadline
28	
	APPLE'S OPPOSITION TO SAMSUNG'S MOT. TO COMPEL CASE NO. 11-CV-01846-LHK (PSG)7sf-3083332







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III.

SAMSUNG'S DEMANDS FOR "ALL" RELATED DOCUMENTS ARE OVERBROAD AND UNDULY BURDENSOME.

Under Civil Local Rule 37-2, a party moving to compel production "must detail the basis
for the party's contention that it is entitled to the requested discovery and must show how the
proportionality and other requirements of Fed. R. Civ. P. 26(b)(2) are satisfied." Apple has
produced, and has agreed to produce, the substantial categories of documents listed above.
Samsung has not, however, met its burden under Local Rule 37-2 with respect to additional
documents, materials, and other information "related" to the items Apple has agreed to produce.

9

A. "All Documents Related" to Alleged Prior Art For Design Patents

Apple has agreed to produce final CAD files for each item of purported prior art sought by Samsung in its motion. (Mazza Decl. ¶ 21.) The parties have not specifically discussed any additional items that Samsung believes it has good reason to request of Apple regarding that alleged prior art. (*Id.*) The fleeting, vague references in Samsung's motion to "all documents related" to prior art do not meet Local Rule 37-2's requirements.

15

"All documents related to the Apple Cinema Display."

Apple denies Samsung's claim that Apple's 1999 "Cinema Display" computer monitor is prior art for the D'889 or any other design patent at issue in this case. Nevertheless, as discussed in Section II, Apple has agreed to produce final CAD files for that line of computer monitors.

Samsung's motion states that Samsung "has also requested that Apple produce all
documents related to the Apple Cinema Display, . . . as well as any related models or prototypes."
(Samsung Mot. at 19.) Samsung first made this request in a letter dated November 8, 2011,

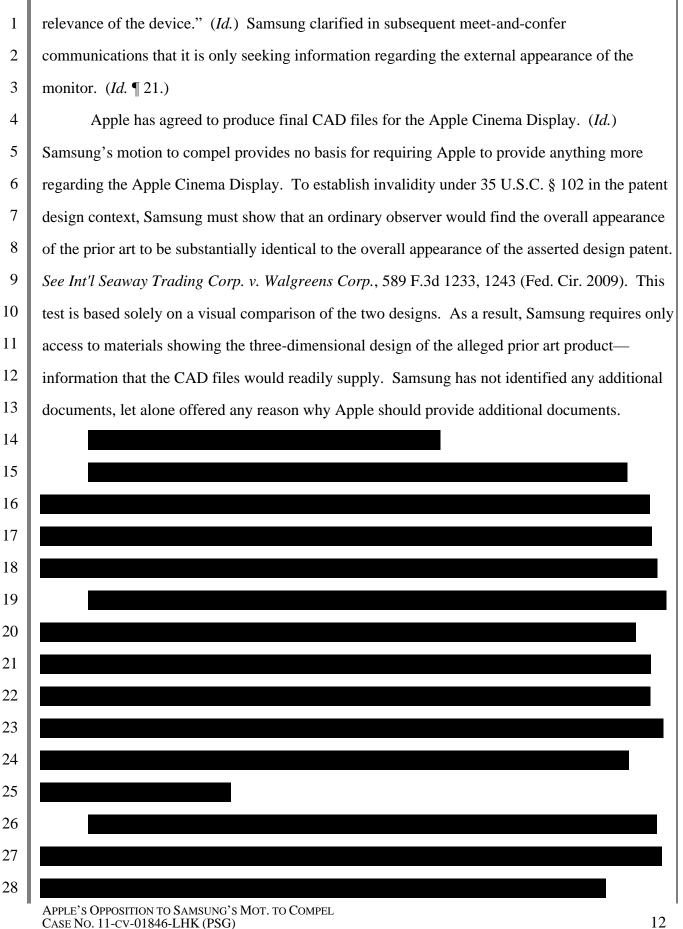
asking Apple to produce "all documents related to Apple Cinema Display, including but not

23 *limited to notebooks, diagrams, progress reports, studies, internal memoranda, contracts for*

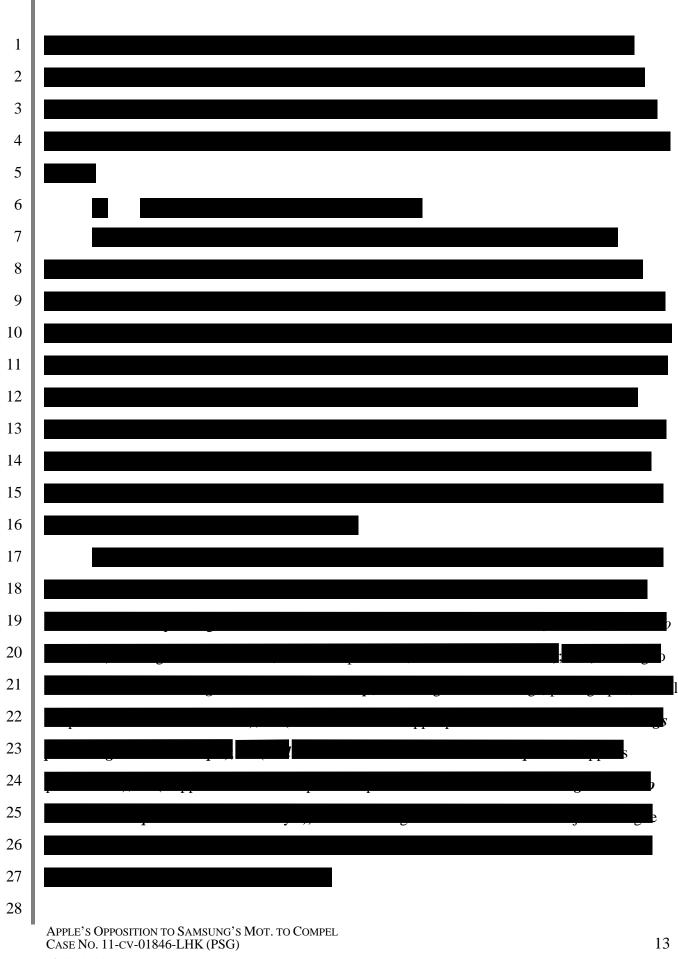
24 services, and communications created or used in connection with the design of Apple Cinema

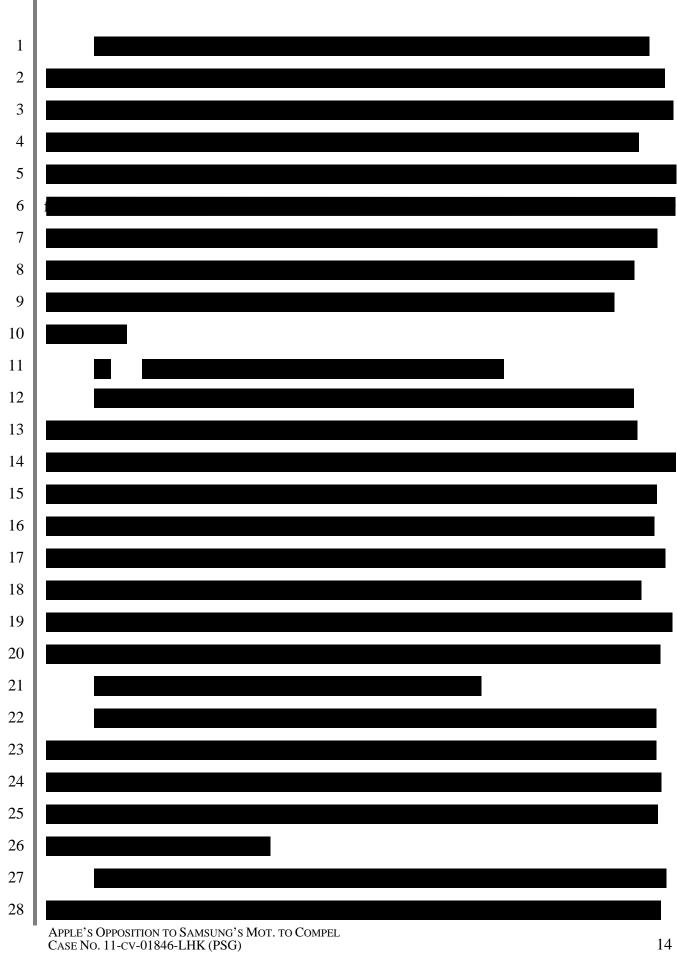
25 Display, as well as any related models or prototypes." (Mazza Decl. ¶ 22.)

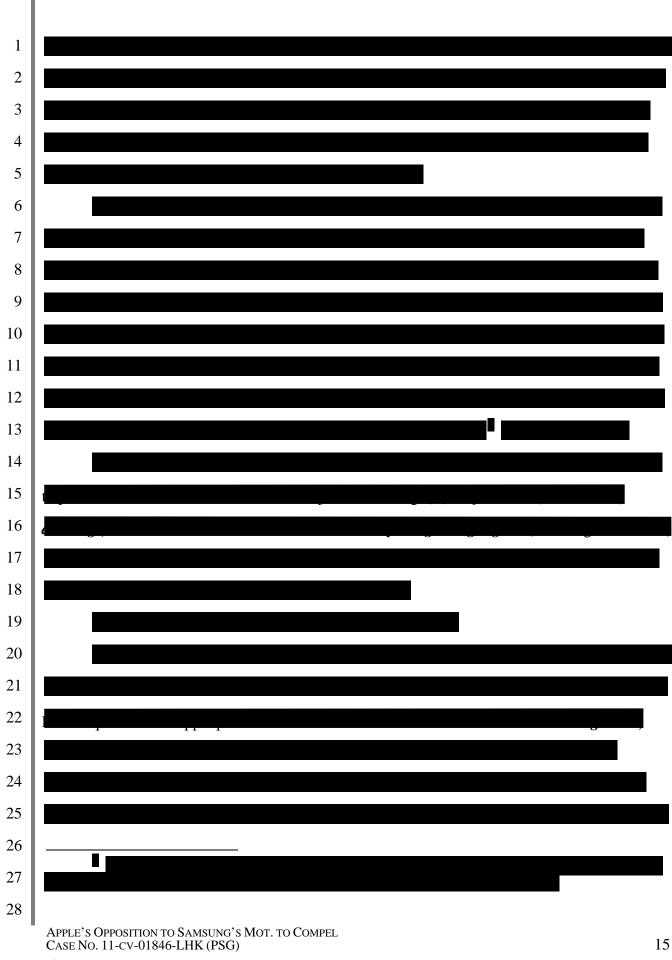
Apple responded on November 10, 2011, asserting its disagreement that the Apple Cinema Display monitor is prior art, and stating further that Samsung's "request for 'all documents related to' the monitor is overbroad and unduly burdensome given the alleged APPLE'S OPPOSITION TO SAMSUNG'S MOT. TO COMPEL CASE NO. 11-CV-01846-LHK (PSG) sf-3083332

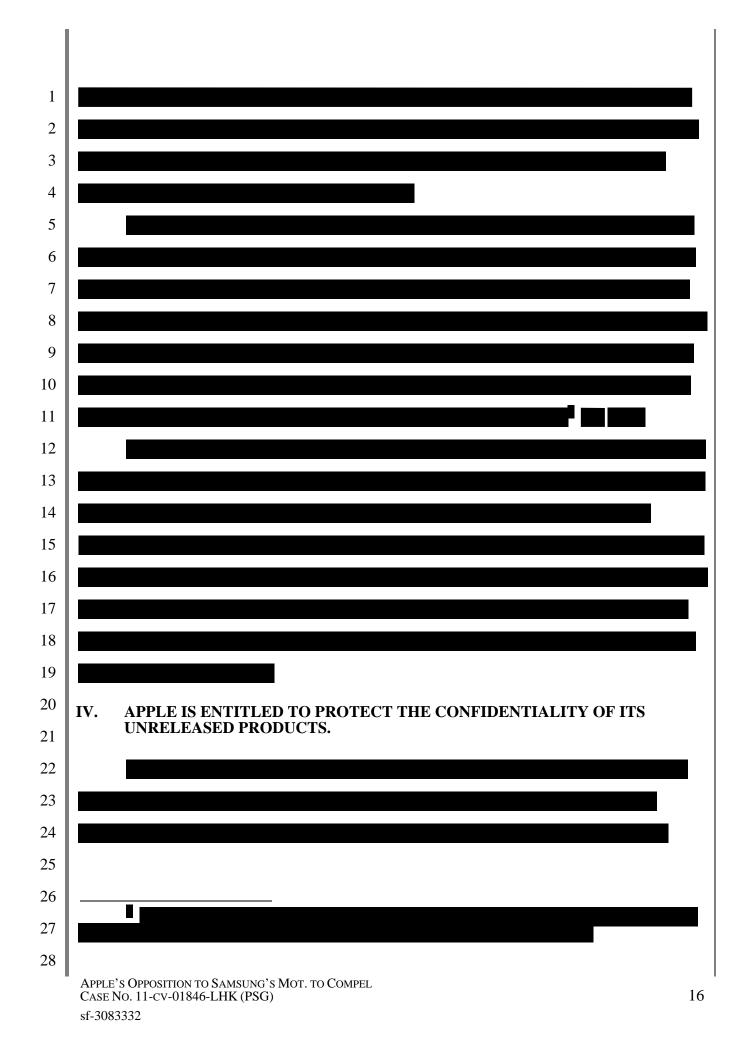


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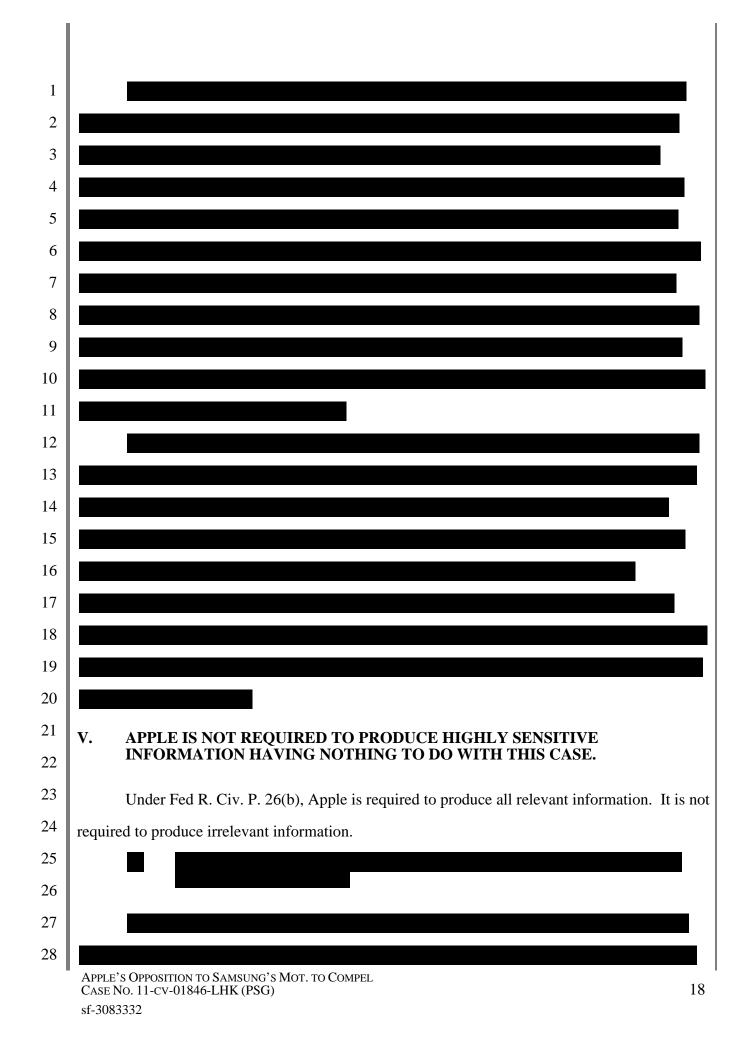


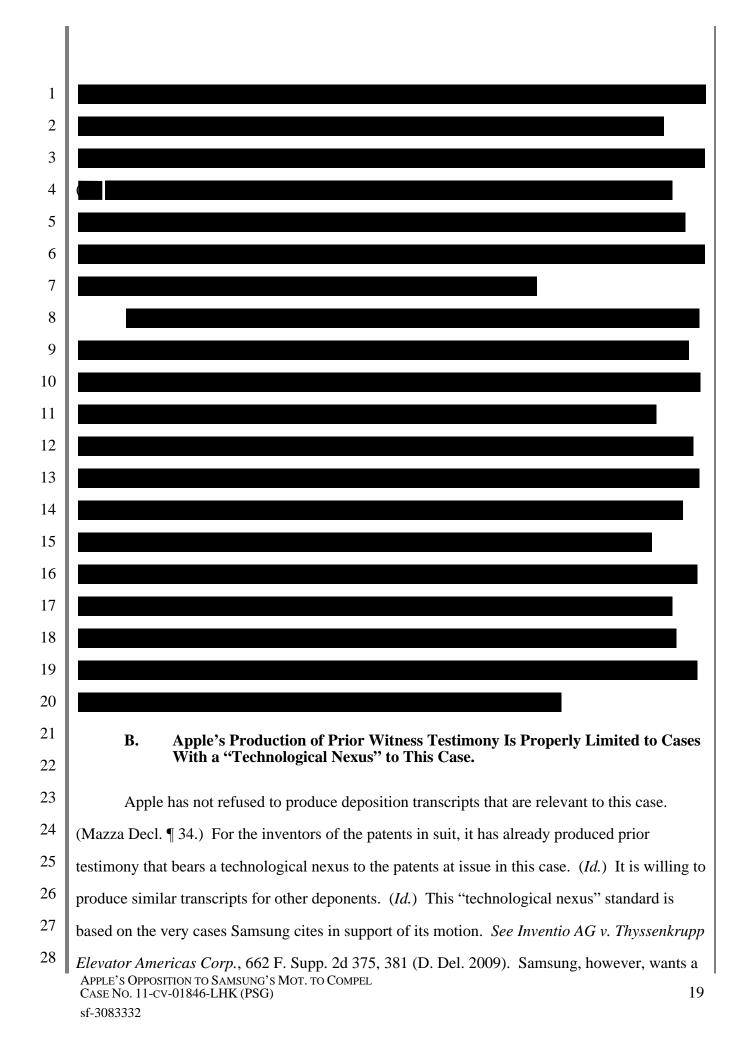












much broader range of deposition transcripts—*all* transcripts of *all* depositions of *all* Apple
 witnesses in *all* cases where the witness was testifying in his or her capacity as an Apple
 employee. (*See* Mot. at 20; Proposed Order at 2.) Samsung's request is unjustifiably overbroad.

4 As Samsung's own authorities acknowledge, Samsung bears the burden of showing why 5 the information sought is relevant to the issues in this case. *Inventio* AG, 662 F. Supp. 2d at 381. 6 Without any explanation or support, Samsung claims that the transcripts it is seeking "almost of 7 necessity relate to the same or similar technologies at issue in this case." (Samsung Mot. at 20.) 8 That assertion is simply untrue. Samsung's demand for all deposition transcripts of Apple 9 employees, regardless of subject matter, encompasses a wide array of transcripts that have 10 nothing to do with the issues in this case. Apple is involved in consumer class actions, 11 employment cases, antitrust, and even personal-injury cases. (Mazza Decl. ¶ 34.) Even for patent 12 disputes, the patents at issue are often unrelated to the patents here. (Id.) Apple's dispute with 13 Kodak, for example, involves digital imaging patents. (*Id.*) None of the transcripts from that 14 case are likely to be relevant to the issues in this case which does not involve digital imaging 15 technology.

16 Moreover, Samsung's requested relief, which demands that Apple produce all prior 17 testimony of "Apple witnesses," is broader than Samsung's document requests. (See Prop. Order 18 at 2.) Samsung bases its motion on four requests for production: Nos. 75, 95, 184, and 187. 19 Requests Nos. 95 and 184 are both limited to transcripts of testimony given by Apple's inventors, 20 not every Apple employee. Requests 75 and 187 both request documents related to Apple's 21 intellectual property or products at issue, which generally fall within the scope of documents 22 Apple is willing to produce. In addition, despite Samsung's current demand that Apple list and 23 describe all cases that it has ever participated in, Samsung has never served Apple with an 24 interrogatory request making this request.

As discussed above, Samsung has not provided an adequate basis for demanding these documents from Apple. On the contrary, it has previously admitted during the parties' meet and confer sessions that the only basis for its broad request is that Apple's employees might have said something in a wholly unrelated case that might have some sort of impeachment value in the APPLE'S OPPOSITION TO SAMSUNG'S MOT. TO COMPEL CASE NO. 11-CV-01846-LHK (PSG) 20 sf-3083332

1	present action. (Mazza Decl. ¶ 35.) That is the definition of a fishing expedition. Such discovery				
2	is not allowed under the Federal Rules of Civil Procedure. Fed. R. Civ. P. 26(b)(2)(C)				
3	(instructing the court to limit discovery if it determines that, among other things, "the discovery				
4	sought is unreasonably cumulative or duplicative" or "the burden or expense of the proposed				
5	discovery outweighs its likely benefit."); see also, Inventio AG v. Thyssenkrupp Elevator				
6	Americas Corp., 662 F. Supp. 2d 375, 381 (D. Del. 2009) (noting that rule 26(b)(2)(C) imposes a				
7	balancing test).				
8	Finally, Samsung's supposed "compromise"—whereby each party creates an "irrelevance				
9	log" justifying why each irrelevant transcript is irrelevant—is not a compromise at all. Samsung				
10	cites no precedent for this request or provides no good reason why these irrelevant depositions				
11	transcripts (as opposed to, for example, sketchbooks) should be singled out for special treatment.				
12	Apple has provided Samsung with its proposed definition of "technological nexus":				
13	Apple interprets "technological nexus" to include prior cases				
14	involving the patents-in-suit or patents covering the same or similar technologies, features, or designs as the patents-in-suit. For the				
15	sake of clarity, with respect to design patent inventors, this would include prior cases involving the asserted design patents or other				
16	design patents covering the same designs or design elements. With respect to utility patent inventors, this would include the asserted				
17	utility patents or other utility patents covering touch-based interface functions, display elements, touch-screen hardware, or touch-screen				
18	logic.				
19	This is a sufficiently clear standard for both parties to follow. Apple requests that the				
20	Court reject Samsung's overly-broad and unduly burdensome request for transcripts.				
21					
22	For these reasons, Apple respectfully requests that Samsung's Motion to Compel be				
23	DENIED. Dated: December 15, 2011 MORRISON & FOERSTER LLP				
24					
25	By: <u>/s/ Richard S.J. Hung</u> Richard S.J. Hung				
26	Attorneys for Plaintiff				
27	APPLE INC.				
28					
	APPLE'S OPPOSITION TO SAMSUNG'S MOT. TO COMPEL21CASE NO. 11-CV-01846-LHK (PSG)21sf-308333221				