

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC.,	)	Case No.: C 11-1846 LHK (PSG)
	)	
Plaintiff,	)	<b>ORDER GRANTING-IN-PART</b>
v.	)	<b>PLAINTIFF’S MOTION TO COMPEL</b>
	)	
SAMSUNG ELECTRONICS CO., LTD, a	)	<b>(Re: Docket No. 467)</b>
Korean corporation; SAMSUNG	)	
ELECTRONICS AMERICA, INC., a New York	)	
corporation; and SAMSUNG	)	
TELECOMMUNICATIONS AMERICA, LLC,	)	
a Delaware limited liability company,	)	
	)	
Defendants.	)	

In this patent infringement suit, Plaintiff Apple Inc. (“Apple”) moves to compel Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively "Samsung") to complete within the next week production of four categories of documents. Apple argues that Samsung does not dispute the relevance of the material, but is delaying production so substantially as to prejudice Apple’s ability to prepare for upcoming depositions, the January 20, 2012 claim construction hearing, and for trial. According to Apple, “Samsung has produced next to nothing relevant to Apple’s infringement allegations.” Apple stresses that the timing of Samsung’s response at this point is critical because

1 Apple needs time to translate materials from Korean and prepare for the depositions, most of which  
2 are to be held in Korea. Because these witnesses may not be present at trial, the depositions may be  
3 Apple's only opportunity to memorialize their testimony. Apple contends that of the few-thousand  
4 documents produced by Samsung since the preliminary injunction hearing, less than one-hundred  
5 have been responsive to Apple's requests regarding Samsung's design decisions, design history,  
6 and analysis of Apple designs. According to Apple, the greater part of Samsung's production  
7 relates to its own counterclaims.

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9 Samsung responds that it has agreed to produce documents in all four categories as soon as  
10 possible, by late December or early January. Samsung argues that because of "technical transfer  
11 and translation issues" that are slowing its production efforts, "an earlier production is physically  
12 impossible." Samsung also dedicates a large part of its opposition to showing that Apple has failed  
13 to produce the equivalent material of which it complains. Samsung therefore asks that any order the  
14 court impose on Samsung to respond within the determined time period is made reciprocal upon  
15 Apple as well.<sup>1</sup>

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17 The parties' appeared for hearing on December 16, 2011. Having considered the arguments  
18 and evidence presented by both sides, the court rules as follows.

19 1. Source code and technical documents showing the operation of the allegedly infringing  
20 product features. Samsung shall produce the source code and technical documents requested by  
21 Apple's motion, with the following exception. With respect to those requests for technical  
22 documents for which there is no indication that the parties met and conferred in advance of court  
23 intervention, the court denies Apple's request without prejudice to Apple re-raising the issues after  
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26 <sup>1</sup> As discussed at the hearing, both parties by now should understand the reciprocal nature of the  
27 obligation to complete production of discovery responses in a timely manner so that the other party  
28 is not prejudiced in its pretrial preparations. If Samsung believes that Apple is not complying with  
its own discovery obligations, whether by the sufficiency of its own source code production or by  
committing to use certain terms in its searches, Samsung is free to raise such failures before the  
court in an appropriately-noticed motion.

1 appropriate meet and confer.<sup>2</sup> Samsung shall produce all other documents and things that fall  
2 within this category of requests no later than December 31, 2011.

3 2. Design history documents showing the decision-making process that led to the design of  
4 Samsung's accused products, including CAD files, inventor and designer sketchbooks, models and  
5 mockups, and email correspondence amongst Samsung employees. Samsung shall complete its  
6 production of these documents and things no later than December 31, 2011.

7 3. Emails and documents showing Samsung's analysis of and consideration of Apple's  
8 products. With respect to any materials subject to the court's September 28, 2011 order<sup>3</sup> that have  
9 not been produced, Samsung shall complete its production immediately and, in any event, no later  
10 than December 31, 2011. Any further failure to comply with the September 28 Order will subject  
11 Samsung to sanctions. All other responsive documents, specifically relating to the additional  
12 products and patent claims that were not at issue during the preliminary injunction phase, shall be  
13 produced on a rolling basis and no later than January 15, 2012.

14 4. Survey and marketing documents. Samsung shall complete its production of these  
15 materials no later than January 15, 2012. As above, with respect to any materials that were subject  
16 to the September 28 Order and not yet produced, Samsung shall complete its production  
17 immediately and, in any event, no later than December 31, 2011. Once again, any further failure to  
18 comply with the September 28 Order will subject Samsung to sanctions.

19 Because there remains substantial disagreement over the scope and relevance of many of  
20 the outstanding requests, as discussed at the hearing, the parties shall continue to prioritize those  
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25 <sup>2</sup> These requests include Apple's Requests for Production ("RFPs") nos. 193, 225, 226, 227, 229,  
230, 231, 233, 234, 235, 240, 243, 244, and 245. *See* Docket No. 501-3 (Chan Decl.).

26 <sup>3</sup> *See* Docket No. 267 (ordering production from the custodial files of Samsung's Galaxy phone and  
27 tablet designers "all documents referencing the Apple products alleged by Apple to embody one or  
28 more of the ornamental or utility features claimed in the patents. All means all: email, memoranda,  
whatever.") ("September 28 Order").

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categories of production identified as most urgent in light of the scheduled depositions, such that a complete production of responsive documents shall be made available to opposing counsel no later than three (3) days before inventor depositions.

**IT IS SO ORDERED.**

Dated: December 22, 2011

  
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PAUL S. GREWAL  
United States Magistrate Judge