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14 AMERICA, INC. and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC  
15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

21 SAMSUNG ELECTRONICS CO., LTD., a  
Korean business entity; SAMSUNG  
22 ELECTRONICS AMERICA, INC., a New  
York corporation; SAMSUNG  
23 TELECOMMUNICATIONS AMERICA,  
LLC, a Delaware limited liability company,

24 Defendants.  
25

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S MOTION TO EXTEND  
TIME FOR COMPLIANCE WITH  
CERTAIN DEADLINES SET BY THE  
COURT'S DECEMBER 22, 2011 ORDER  
PURSUANT TO L.R. 6-1 AND 6-3**

1 Pursuant to Local Rules 6-1(b) and 6-3, Samsung hereby moves the Court to extend the  
2 period for compliance with certain deadlines set by the Court's December 22, 2011 Order (Dkt.  
3 No. 537). Despite its ongoing productions and its herculean efforts to collect, process and  
4 produce a substantial amount of additional documents in a nine-day period over the winter  
5 holidays as required by the Court's Order, Samsung has now confirmed that full compliance by  
6 the December 31 deadline will be physically impossible with respect to a few document sub-  
7 categories. Samsung therefore respectfully requests a short extension of that deadline to January  
8 9, 2011 – an extension that will not impact the case calendar nor prejudice Apple in any way.

### 9 **FACTUAL BACKGROUND**

10 On December 8, 2011 Plaintiff Apple, Inc. ("Apple") filed a Motion to Compel Production  
11 of Documents and Things. (Dkt. No. 467). On December 22, 2011, the Court issued an Order  
12 Granting-in-Part Plaintiff's Motion to Compel. (Dkt. No. 537). The Court ordered Samsung to  
13 produce four broad categories of documents by December 31, 2011. (*Id.*)

14 Both before and after the Court issued the Order, Samsung has been involved in an  
15 immense effort to collect and complete production of all documents subject to the Court's Order.  
16 (Declaration of Hankil Kang (filed herewith), ¶ 4.) Given the massive volume of data that had to  
17 be collected pursuant to the Order, and the physical limitations on how much Samsung's current e-  
18 discovery vendor could process in such a short period of time (nine days over the holiday period),  
19 Samsung has engaged an additional discovery vendor to assist in collecting and processing the  
20 requested documents. (*Id.*) This new e-discovery vendor has had to obtain additional servers to  
21 process the volume of data required by the Court's Order, and is processing the data at data centers  
22 in three different countries in an effort to expedite the production of these documents to the  
23 greatest extent possible. (*Id.*) Samsung also has directed its outside counsel to hire additional  
24 attorneys to assist in the expedited review process, given the amount of data involved and the  
25 limited availability of certain personnel over this nine-day holiday period. (*Id.*) Both Samsung  
26 and its outside counsel have worked straight through the holidays, including on Christmas Eve and  
27 Christmas Day, in Samsung's attempt to meet the Court's deadlines. (*Id.*) Samsung also has  
28 had to contact various custodians at their homes over the holidays in order to conduct additional

1 document collection interviews. (*Id.*) Further, Samsung representatives have personally  
2 couriered hard drives with data from Korea to the United States during this holiday period, in  
3 order to deliver the data to the relevant personnel as quickly as possible. (*Id.*)

4 Samsung anticipates being able to comply in full with two of the four categories of  
5 documents referenced in the Court's December 22 Order by the December 31 deadline, and to  
6 comply in part with the other two categories. Despite its extensive efforts, however, the sheer  
7 breadth of Apple's requests makes it impossible for Samsung to complete production of all  
8 portions of the latter two categories of responsive documents by December 31, 2011. (*Id.* ¶ 5.)  
9 Specifically, based on Samsung's e-discovery vendor's current estimates, for the portion of item 2  
10 of the Court's Order referencing designer emails, while this production has already commenced  
11 and is ongoing, Samsung anticipates that some design history emails for some of the relevant  
12 custodians will not be complete by December 31. (*Id.*) Additionally, for item 4 of the Court's  
13 order, while this production has already commenced and is ongoing, Samsung anticipates that  
14 some responsive documents for some of the customer survey custodians (in particular, those  
15 custodians who were discovered just this month) will not be complete by December 31. (*Id.*)  
16 While Samsung intends to produce these documents on a rolling basis, based on its current  
17 estimates Samsung believes that the production of these two subsets of documents will not be  
18 completed until January 9, 2011.

## 19 ARGUMENT

### 20 I. Despite Samsung's Best Efforts To Comply Fully With The Court's December 22, 21 2011 Order, Samsung Requires Additional Time To Comply With Just Two Subsets 22 Of The Many Categories Of Documents Called For By That Order.

23 Samsung has worked diligently – and literally around the clock – to expedite the collection  
24 and production of documents requested by Apple and ordered produced by this Court. Well  
25 before the Court's December 22, 2011 Order, Samsung had already begun to produce source code  
26 and design history documents (including emails, documents, mockups, CAD files, sketchbooks  
27 and the like) relating to the Samsung accused products. Samsung also had already collected and  
28 produced documents that reference the Apple products from its designers and relevant customer

1 survey custodians, in compliance with the Court's earlier September 28, 2011 Order.

2 Nevertheless, Apple's demands as ordered by the Court require substantial additional efforts.

3         Since the Court's December 22, 2011 Order, despite already reaching its limits as to time  
4 and resources, Samsung has redoubled its efforts. Samsung has engaged an additional document  
5 vendor (which vendor has in turn obtained additional servers in three countries on two continents),  
6 and has hired additional attorneys to assist in collecting, reviewing and producing documents over  
7 this holiday period. Samsung's counsel has worked straight through the holidays, including on  
8 Christmas Eve and Christmas Day, and Samsung has worked hard to try to overcome the  
9 significant barriers it has faced with the holiday vacation schedules of its employees and vendors.

10         Samsung's ongoing efforts thus far have resulted in the substantial collection and  
11 production of documents – which Apple has demanded be expedited for little reason other than to  
12 prompt Samsung's production several months in advance of the close of fact discovery. Since  
13 Apple filed its motion to compel, Samsung has produced nearly 40,000 pages of documents from  
14 at least ten custodians. As of this filing, Samsung believes it will be in full compliance with two  
15 of the four categories of documents called for by the December 22 Order – specifically, item #1  
16 regarding certain source code, and item #3 regarding certain documents referencing Apple's  
17 products – on or before the December 31 deadline. (Dkt. No. 537). Samsung also anticipates  
18 that its production will be complete regarding most of the subcategories of design history  
19 documents pursuant to item #3, such as CAD files, sketchbooks, mockups and the like. Samsung  
20 further anticipates that its production will be partially complete with respect to item #4, customer  
21 survey documents referencing Apple products.

22         Nevertheless, despite these extensive efforts to comply with the Order, Samsung has  
23 encountered yet additional unforeseen difficulties that have slowed the production process to the  
24 point where Samsung will not be able to comply in full with certain subsets of two of the  
25 categories of documents called for by the Order's December 31, 2011 deadline. The primary  
26 obstacle is the sheer volume of data that Apple is seeking, and the breadth of the search terms  
27 which must be used to locate responsive documents. In many instances, individual custodians  
28 possess hundreds of gigabytes of potentially responsive documents, while central files may

1 contain terabytes of potentially responsive documents. It has taken several days to even transfer  
2 the data from Samsung to vendors for processing (which requires complicated decryption efforts,  
3 among other things), and several more days to make the data available to outside counsel for  
4 review (due to physical limits on computing time). Further complicating matters, access to  
5 custodians' files has been limited due to the holiday travel schedules of Samsung employees,  
6 many of whom were out of the office before the Court issued the December 22, 2011 Order.

7 Thus, despite Samsung's diligent efforts to comply with the Court's Order, Samsung will  
8 need a brief extension of the deadline for completing production of certain subsets of documents.  
9 Specifically, based on Samsung's e-discovery vendor's current estimates, for the portion of item 2  
10 of the Court's Order referencing designer emails, while this production has already commenced  
11 and is ongoing, Samsung anticipates that some design history emails for some of the relevant  
12 custodians will not be complete by December 31. (Kang Decl. ¶ 5.) Additionally, for item 4 of  
13 the Court's order, while this production has already commenced and is ongoing, Samsung  
14 anticipates that some responsive documents for some of the customer survey custodians (in  
15 particular, those custodians who were discovered just this month) will not be complete by  
16 December 31. (*Id.*) While Samsung intends to produce these documents on a rolling basis,  
17 based on its current estimates Samsung believes that the production of these two subsets of  
18 documents will not be completed until January 9, 2011. This date represents the earliest possible  
19 date by which Samsung currently believes it will be able to complete production of all documents  
20 that are the subject of the Court's Order. If Samsung is able to complete its production sooner  
21 than January 9, it will do so.

22 **II. Samsung Has Sought Apple's Stipulation, But Apple Has Refused Without**  
23 **Explanation.**

24 Yesterday, Samsung's counsel informed counsel for Apple of the logistical impossibility  
25 Samsung was facing in its attempts to complete this production by December 31, and requested  
26 that Apple stipulate to a brief extension of Samsung's December 31 deadline for just two small  
27 subsets of the four large categories of documents ordered produced by that date. Inexplicably,  
28

1 Apple refused Samsung's request, despite the fact that Apple will suffer no prejudice by this brief  
2 extension.

3 **III. Samsung's Requested Extension Will Have No Impact On The Case Schedule.**

4 In this motion, Samsung does not ask that the Court change any of the deadlines set for the  
5 close of discovery or for trial. (See Dkt. No. 187.) The parties have previously stipulated to  
6 minor extensions of the Court's deadlines for various depositions and briefing (see Dkt. Nos. 119,  
7 125, 146, 208, 322, 443), but the schedule for the close of discovery or for the trial has not been  
8 modified by stipulation or by Court order. The current requested extension also will have no  
9 impact on Apple's ability to conduct any of the upcoming scheduled depositions of Samsung  
10 witnesses (which begin in mid-January), as Samsung is prioritizing the productions related to  
11 those deponents. Samsung will complete these productions at least three days in advance of  
12 those depositions, in compliance with the Court's December 22 Order.

13 **CONCLUSION**

14 For the foregoing reasons, Samsung respectfully requests that this Court extend Samsung's  
15 deadline to comply with the Court's December 22, 2011 Order in certain respects as set forth  
16 above from December 31, 2011 to January 9, 2012.

17  
18 DATED: December 29, 2011

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20  
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