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

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

**APPLE’S OPPOSITION TO
 SAMSUNG’S ADMINISTRATIVE
 MOTION TO EXTEND TIME FOR
 COMPLIANCE WITH ORDER ON
 MOTION TO COMPEL**

Judge: Paul S. Grewal

1 [C]onsumer surveys was a contested topic, we thought it was not
2 relevant in this instance, *we thought rather than fight it just produce*
3 *it so we did*. We are surprised to see that in the motion to compel
4 (Bartlett Decl. Ex. A at 66:16-23, 67:2-6 (emphasis added).) The Court granted Apple’s motion
5 that same day and ordered Samsung to make this production by October 7th.

6 ***Samsung’s Repeated Promises.*** Samsung did not complete its survey production as
7 ordered. Apple therefore pressed Samsung, in discovery correspondence and in telephonic meet-
8 and-confers, to complete this production. (*Id.* ¶ 6, Ex. B.) Apple noted that Samsung’s non-
9 production violated the Court’s September 28th Order. Samsung promised that it was already
10 addressing Apple’s concern:

11 Samsung disagrees with Apple's overly broad reading of the Order . .
12 . . Nevertheless, during our call we agreed to take Apple's request
13 back to Samsung in hopes of resolving the issue. We have done so,
14 and Samsung has agreed to consider supplementing its production
15 based upon Apple's broader request. We will get back to you shortly.

16 (*Id.* Ex. C.) When Samsung still did not make this production, Apple continued to press Samsung.
17 (*Id.* ¶¶ 8-9, Exs. D-E.) Samsung promised on December 3rd to “use its best efforts to complete
18 substantial production of [survey] documents before December 15, 2011.” (*Id.* ¶ 10, Ex. F.)

19 ***Apple’s Second Motion to Compel.*** When Samsung again did not produce the documents
20 as promised and ordered, Apple filed another motion to compel. (Bartlett Decl. ¶ 11.) In
21 opposing Apple’s subsequent motion, Samsung underscored its multiple promises to produce its
22 survey documents, and it again promised to make this production promptly, claiming that it was
23 making “every effort” to do so:

24 Again, on at least December 3, 4 and 8, Samsung agreed to produce
25 relevant survey documents Moreover, Samsung committed to
26 substantially completing that production by December 31, 2011,
27 and is making every effort to meet that deadline

28 (Opp. to Apple’s Mot. to Compel (“MTC Opp.”), filed Dec. 14, 2011, at 8.)

Samsung’s Concessions of Delay. Only now, after all these promises and two Court
orders, has Samsung finally undertaken the task of collecting these documents. Samsung’s
declarant admits as much, explaining Samsung’s efforts to produce these documents *now for the*
first time. (See Kang Decl. ISO Mot. to Extend Time for Compliance with Certain Deadlines Set

1 by the Court’s Dec. 22, 2011 Order [Dkt. 554-1] (“Kang Decl.”) ¶ 4.) Mr. Kang emphasizes the
2 “massive volume of data that had to be collected pursuant to the Order,” explains the difficulties
3 in reviewing these documents over a “nine-day period,” and describes how Samsung hired e-
4 discovery help and attorneys, bothered custodians at home, and couriered data from Korea. (*Id.*)

5 After months of representations that a full production of consumer survey documents was
6 complete or around the corner, Apple is at a loss to understand how Samsung could still have a
7 “massive volume of data” to collect and review. Samsung has no excuse for not undertaking
8 these efforts sooner. The *only* survey documents that Samsung is required to produce by
9 December 31st are those already “*subject to the September 28[th] Order and not yet produced.*”
10 (Dkt. 537 at 3 (emphasis added).) Per the Court’s prior September 28th Order, these documents
11 should have been produced by October 7th. Not only is Samsung in violation of that prior order,
12 its violation is so massive that it requires another 10 days to complete this production – even after
13 (allegedly) working flat-out for 9 days.

14 **II. Samsung Promised to Produce Design History Documents Long Ago.**

15 There also is no excuse for Samsung’s claimed need for further time to produce its design
16 history documents. As with the survey documents, the Court addressed Samsung’s production of
17 its design history documents at the September 28th hearing. Samsung’s counsel acknowledged
18 that “[t]here’s a body of design documents,” but claimed that Samsung had already “produced a
19 huge number of them.” (Bartlett Decl. ¶ 4, Ex. A at 66:8-9.)

20 In response to Apple’s subsequent inquiries about the timing of Samsung’s complete
21 production of these documents, Samsung agreed to “substantially complete” this production by
22 December 15th. Samsung promised to “re-run” certain searches against the collections of
23 “designers and engineers who worked on the products at issue, employees responsible for
24 marketing those products, and employees responsible for developing the infringing features” by
25 that date. (*Id.* ¶ 10, Ex. F.) In opposing Apple’s motion to compel, Samsung repeated this
26 promise, noting that it “already has committed to make its best efforts to substantially complete
27 its production of the specified design history documents by January 6, 2012.” (MTC Opp. at i, 1.)
28

1 As with the survey documents, Samsung’s claims that it is finally collecting and
2 reviewing a “massive volume of data” *now* for production on January 9th belie its prior
3 representations. Despite claiming that it had collected these documents, just needed to “re-run”
4 searches, and could produce them sooner, Samsung now alleges that it requires additional time to
5 complete this production. Samsung’s failure to advance its production of these documents, after
6 previously representing that it would do so by dates certain, is its own fault.

7 **III. Samsung’s Claims of Diligence Are Not Credible.**

8 While Samsung claims that it has been “working around the clock” to comply with the
9 Court’s Order (Mot. at 2), these claims are not credible. This week alone—despite claiming that
10 no Samsung attorneys were available to confer on Apple’s discovery requests because they were
11 working to comply with the Court’s Order —*four different Samsung attorneys sent seven single-*
12 *spaced, multi-page letters* on discovery issues of concern to Samsung. (Bartlett Decl. ¶ 13.)
13 Samsung plainly has elected to place its own discovery priorities above the Court’s Orders.

14 Samsung’s latest production is the clearest evidence of its lack of diligence. In its Order,
15 the Court obligated to Samsung to make its production of its survey and design history documents
16 by “no later than December 31, 2011.” (Dkt. 537 at 3.) In its motion, Samsung itself
17 acknowledges its intent to “produce these documents on a rolling basis.” (Mot. at 2.) In the 8
18 days after the Court entered its Order, however, Samsung produced a grand total of 84 documents.
19 All of these documents relate to single potential deponent, Jaegwan Shin. (Bartlett Decl. ¶ 14.)
20 None of the deponent’s documents are survey documents. (*Id.*) Samsung now claims, on the
21 ninth day, to have produced “40,000 pages” from “at least ten custodians.” Apple has just begun
22 reviewing this production, but Samsung’s claim is notable for what it omits: who are the
23 custodians, what other custodians are being searched, when and how did Samsung actually search
24 for responsive documents, why were these documents not produced previously, and what remains.

25 Samsung’s lack of diligence in complying with the Court’s order is striking in comparison
26 with Apple’s own efforts. A team of over 25 *individuals* – including scanner operators, Apple in-
27 house attorneys and legal assistants, discovery technicians, and outside counsel—has worked
28 overtime and over weekends during the holiday season to comply with Apple’s obligations

1 pursuant to the December 22nd order. (Bartlett Decl. ¶ 16.) The Apple employees did so *despite*
2 *a company-wide shutdown and preexisting vacation plans.* (*Id.*) Apple will meet the Court's
3 deadline because of these extensive efforts and because it did not begin, but rather accelerated, its
4 efforts after the December 22 Order issued. Samsung has no excuse for not doing the same.

5 **IV. Apple Will Be Prejudiced By Further Delays.**

6 In light of Samsung's intentional delays and violations of this Court's orders, there is no
7 reason to grant Samsung's requested extension. While an extension might be warranted for
8 unforeseeable circumstances (*e.g.*, technical production difficulties), Samsung's pattern of
9 promises, non-production, and delay is not such a circumstance.

10 Samsung's delays have already prejudiced Apple. The March 8, 2012 fact discovery
11 deadline looms large, but Apple still lacks core documents important to its claims. The parties
12 also have scheduled a series of depositions beginning on January 11th, just two days after
13 Samsung's proposed new production deadline. Samsung also has yet to offer days for 30
14 additional depositions. Unless Apple receives these documents (many of which will be in
15 Korean) *now*, it will be difficult to prepare for these depositions and conduct follow up discovery.

16 Besides denying Samsung's requested relief, the Court should direct Samsung to disclose
17 *immediately and in detail* what it plans to produce in response to the Court's Order. Samsung is
18 already required under the Court's prior orders to disclose sources of data searched, search terms,
19 and other search parameters and limitations. Accelerating this disclosure will allow Apple to
20 assess the adequacy of Samsung's upcoming production and determine whether additional relief
21 is required. In view of Samsung's past and ongoing delays, neither Apple nor the Court should be
22 forced to wait until mid-January to determine the scope of Samsung's compliance.

23 **CONCLUSION**

24 After months of promises and two Court orders, Samsung cannot delay its production of
25 survey and design history documents any longer. The Court should deny Samsung's requested
26 extension and require that it produce the compelled documents immediately, as ordered by this
27 Court on September 28th and December 22nd. The Court also should order Samsung to disclose
28 the scope and parameters of its production immediately.

