

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Charles K. Verhoeven (Bar No. 170151)

2 [charlesverhoeven@quinnemanuel.com](mailto:charlesverhoeven@quinnemanuel.com)

50 California Street, 22<sup>nd</sup> Floor

3 San Francisco, California 94111

Telephone: (415) 875-6600

4 Facsimile: (415) 875-6700

5 Kevin P.B. Johnson (Bar No. 177129)

[kevinjohnson@quinnemanuel.com](mailto:kevinjohnson@quinnemanuel.com)

6 Victoria F. Maroulis (Bar No. 202603)

[victoriamaroulis@quinnemanuel.com](mailto:victoriamaroulis@quinnemanuel.com)

7 555 Twin Dolphin Drive, 5<sup>th</sup> Floor

Redwood Shores, California 94065-2139

8 Telephone: (650) 801-5000

9 Facsimile: (650) 801-5100

10 Michael T. Zeller (Bar No. 196417)

[michaelzeller@quinnemanuel.com](mailto:michaelzeller@quinnemanuel.com)

11 865 S. Figueroa St., 10th Floor

Los Angeles, California 90017

12 Telephone: (213) 443-3000

13 Facsimile: (213) 443-3100

14 Attorneys for SAMSUNG ELECTRONICS CO.,  
LTD., SAMSUNG ELECTRONICS AMERICA,  
15 INC. and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC  
16

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19  
20 APPLE INC., a California corporation,

21 Plaintiff,

22 vs.

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

26 Defendant.  
27

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S REPLY CLAIM  
CONSTRUCTION BRIEF**

**Date: January 20, 2012**

**Time: 10:00 am**

**Place: Courtroom 8, 4th Floor**

**Judge: Hon. Lucy H. Koh**

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1 **I. INTRODUCTION**

2 Samsung respectfully submits this reply brief regarding the disputed claim term “applet”  
3 from Samsung’s 7,698,711 patent (the “711 Patent”). Apple’s response brief (Dkt. No. 0540,  
4 “Resp. Br.”) disregards well settled Federal Circuit claim construction law by ignoring the  
5 intrinsic record and relying entirely on cherry-picked extrinsic evidence. The overwhelming  
6 evidence demonstrates that “applet” should be construed to include both operating system  
7 independent and operating system dependent applets. There is simply no basis in the intrinsic or  
8 extrinsic record for limiting “applet” to one that is operating system independent. Apple’s  
9 carefully selected extrinsic evidence proves unpersuasive in light of the non-limiting intrinsic  
10 record, a complete view of the extrinsic evidence, and the testimony of Apple’s own expert, as  
11 well as Samsung’s. Accordingly, Samsung’s construction should be adopted by the Court.

12 **II. LEGAL AUTHORITIES**

13 It is undisputed that claims are construed as “a person of ordinary art understands a claim  
14 term” because “[it] [is] well-settled [*sic*] that inventors are typically persons skilled in the field of  
15 the invention and that patents are addressed to and intended to be read by others of skill in the  
16 pertinent art.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 75 U.S.P.Q.2d 1321 (Fed. Cir. 2005)  
17 (*en banc*), *cert. denied*, 546 U.S. 1170, 126 S. Ct. 1332 (2006).

18 “It is well-settled that, in interpreting an asserted claim, the court should look first to the  
19 intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in  
20 evidence, the prosecution history. Such intrinsic evidence is the most significant source of the  
21 legally operative meaning of disputed claim language.” *Liquid Dynamics Corp. v. Vaughan Co.,*  
22 *Inc.*, 355 F.3d 1361, 1367 (Fed. Cir. 2004) (*quoting Vitronics Corp. v. Conceptronic Inc.*, 90 F.3d  
23 1576, 1582 (Fed. Cir. 1996)).

24 Extrinsic evidence such as expert testimony and dictionaries can be helpful construing the  
25 terms, but cannot overcome contradictory intrinsic evidence. The Court must ignore expert  
26 testimony attempting to alter the unambiguous scope of a patent term. *On-Line Tech. v.*  
27 *Bodenseewerk Perkin-Elmer*, 386 F.3d 1133, 1139, 73 U.S.P.Q.2d 1116, 1121 (Fed. Cir. 2004)

1 (“Extrinsic evidence, however, cannot be used to alter a claim construction dictated by a proper  
2 analysis of the intrinsic evidence.”).

3 Further, an unmodified claim term describing a known, general area of technology cannot  
4 be limited to the most popular or common mode of implementation if a person of ordinary skill in  
5 the art has knowledge of other modes of implementing the technology. *SuperGuide Corp. v.*  
6 *DirectTV Enters., Inc.* 358 F.3d 870, 880 (Fed. Cir. 2004) (overturning the District Court’s narrow  
7 construction of “regularly received television signal” because “[a]lthough analog may have been  
8 the dominant format of video data when the ’578 patent application was filed, we have little doubt  
9 that those skilled in the art knew of the existence of digital video data at the time.”).

10 **III. ARGUMENTS**

11 **A. The ’711 Patent**

12 As described in Samsung’s Opening Brief, one of the ’711 Patent’s inventive features is  
13 implementing multi-tasking with the music background play object. Apple appears to agree,  
14 devoting a significant number of pages in its brief reinforcing what Samsung has already presented  
15 to the Court. Unlike the prior art that merely used simple programs to play music files, the  
16 invention’s “music background play object,” which “includes an application module including at  
17 least one applet,” “provid[es] an interface for music play.” ’711 Patent Cl. 1; Resp. Br. p. 2-8.

18 Apple attempts to reframe the issue—broadly grouping together all “mobile phone[s] that  
19 play[] music”<sup>1</sup> and debating if certain types of applets are or are not operating system dependent.  
20 Resp. Br. p. 4-9. The record is clear, both operating system dependent and independent applets  
21 existed at the time of invention, and a person of ordinary skill in the art at the pertinent time would  
22 not limit the term “applet” to require operating system independence, as Apple proposes.

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27 <sup>1</sup> Samsung notes that Apple is unlikely to take this broad stroke position if/when attempting to  
28 assert its own, later dated, patents regarding mobile phone music players.

1           **B.     “Applet”**

2 <b>Samsung’s Proposed Construction</b>	3 <b>Apple’s Proposed Construction</b>
4           “A small application designed to run within another program.”	5           “An operating system-independent computer program that runs within an application module.”

6           Although Apple makes much of minute differences between the constructions, the dispute  
7           boils down to a single issue: whether the term “applet” is limited to one type of applet—the  
8           operating system independent applet (as Apple asserts), or if the term can be either operating  
9           system independent or operating system dependent (as Samsung asserts). Indeed, Apple’s expert  
10          agreed that the two constructions, while using slightly different terminology, are otherwise  
11          substantively the same. Givargis Dep. at 81:8-13 (Ex. A)<sup>2</sup> (“[I]n the field of computer science  
12          oftentimes a program is used when an application would work equally as well.”); Givargis Dec. at  
13          ¶ 42 (agreeing “applets” are “small”).

14                           **1.     Nothing in the Intrinsic Evidence Supports Apple’s “Operating System  
15                           Independent” Limitation**

16          The weight of the intrinsic and extrinsic evidence supports Samsung’s construction—that  
17          “applet” in the ’711 Patent is not limited to operating system independent applets. Both parties  
18          agree:

- 19           1.     the patent’s specification does not describe any embodiments limiting the term  
20           “applet” to an operating system independent applet. Givargis Dep. at 36:15-23,  
21           39:17-40:1 (Ex. B);
- 22           2.     the claims do not expressly limit the term “applet” to require operating system  
23           independence. *See, e.g., Id.* at 39:17-40:1 (Ex. B);
- 24           3.     the prosecution history does not limit “applet” to merely operating system  
25           independent applets. *Id.* at 35:25-36:4 (Ex. C);

26 \_\_\_\_\_  
27           <sup>2</sup> Citations to “Ex. \_\_\_” refer to the Declaration of Todd M. Briggs in Support of Samsung’s  
28           Reply Claim Construction Brief and the exhibits thereto.

- 1           4.       the inventor of the '711 Patent, Moon-Sang Jeon, conceived the invention of the  
2                     '711 Patent while working with operating system dependent applets. *Id.* at 40:13-  
3                     23; 41:17-19 (Ex. D); and
- 4           5.       at the time of the invention, there were both operating system dependent and  
5                     independent applets. *Id.* at 41:25-42:8 (Ex. E).

6           Because of this overwhelming evidence that Apple does not, and cannot dispute, Apple's  
7 brief concentrates exclusively on the mere existence of operating system independent applets and  
8 argues that this mere existence somehow limits the claims to operating system independent  
9 applets. Given that both types of applets existed at the time of invention, and that persons of  
10 ordinarily skill in the art, like the inventor of the '711 Patent, had knowledge of and actively  
11 developed operating system dependent applets, it would be improper to limit "applet" to an  
12 operating system independent type. *SuperGuide*, 358 F.3d at 880.

13                     **2.       Apple's Expert Witness Testimony Cannot Overcome the Clear**  
14                     **Intrinsic Evidence**

15           Apple's entire argument relies on carefully selected extrinsic evidence, including  
16 unsupported expert testimony. Such evidence "cannot be used to alter a claim construction  
17 dictated by a proper analysis of the intrinsic evidence." *On-Line Tech.*, 386 F.3d at 1139.

18           Apple's only evidence that "applet" must be limited to "operating system independent  
19 applets" is the testimony of its expert witness. Dr. Givargis opines, without support, that "the  
20 association between an applet running or an applet that is within an application module and that  
21 association to [him] suggests a Java-like interpreted environment." *See, e.g.*, Givargis Dep. at  
22 40:5-9 (Ex. F); Givargis Dec. ¶ 44. Dr. Givargis does not explain why this "association"  
23 "suggests" such a conclusion, nor does he proffer evidence supporting his conclusion. *See, e.g.*,  
24 *Id.* Such unsupported expert opinion cannot overcome a clear intrinsic record that places no  
25 operating system independent limitation on the term "applet."

26           Even if it were supported, Dr. Givargis's opinion alone cannot overcome the clear intrinsic  
27 evidence, which does not in any way require that an applet be operating system independent. *On-*  
28 *Line Tech.*, 386 F.3d at 1140 (reversing a district court's adaptation of an expert witness'

1 narrowing construction because it contradicted the intrinsic evidence). As such, Apple’s  
2 unsupported limitation proffered by an expert witness should be rejected.

3 **3. Apple’s Cherry-Picked Extrinsic Evidence Cannot Overcome the Clear**  
4 **Intrinsic Evidence**

5 Through a carefully selected set of extrinsic evidence, Apple implies that a person of  
6 ordinary skill in the art was only aware of one type of applet, the operating system independent  
7 variety of Java applets. However, as Dr. Givargis admitted, he chose resources that he expected to  
8 discuss only operating system independent applets, excluding discussion of operating system  
9 dependent applets. Givargis Dep. at 70:24-71:6 (Ex. G) (Q:…Since this particular document is  
10 limited to Java, you personally would not expect to see discussion of operating-system dependent  
11 applets in it, correct? A: That is correct[.]”), 73:1-11 (Ex. G); Givargis Dec. at ¶¶44-54.

12 Such litigation inspired selections of extrinsic evidence fails to properly inform the Court  
13 regarding the full knowledge of the person of ordinary skill in the art. *Howmedica Osteonics v.*  
14 *Wright Med. Tech.*, 540 F. 3d 1337, 1346 (Fed. Cir. 2008)(citing *Phillips*, 415 F.3d at 1319  
15 (holding that extrinsic evidence should only be “considered in the context of the intrinsic  
16 evidence, if it can help educate the court regarding the field of the invention and can help the court  
17 determine what a person of ordinary skill in the art would understand claim terms to mean.”)).

18 **4. Apple’s Reasoning Has Already Been Rejected by the Federal Circuit**

19 The Federal Circuit has already rejected Apple’s claim construction reasoning. Apple  
20 reasons that those of ordinary skill in the art may have assumed that the term “applet” meant Java  
21 applet, that a Java applet is commonly operating system independent, and therefore all applets  
22 must be operating system independent. *See, e.g.*, Givargis Dep. at 53:10-11 (Ex. H) (in response  
23 to being asked if an applet must always be operating system independent, “it is not universally the  
24 case but commonly the case”), 94:3-4 (Ex. H) (“applets are commonly[,] usually assumed to be  
25 operating-system independent”) ; Givargis Dec. at ¶ 42 (defining “applet” as “a small program  
26 typically written in Java”), ¶ 45 (“applets can be independent of the host platform”).  
27  
28

1 Even taken at face value, Apple’s evidence contradicts its construction, that an “applet”  
2 must be operating system independent. Apple offers no evidence that a person of ordinary skill in  
3 the art understood “applet” to be exclusively an operating system independent applet.

4 Similar reasoning was rejected by the Federal Circuit in *SuperGuide*. There, the Federal  
5 Circuit overturned a narrow construction of “regularly received television signal.” *SuperGuide*,  
6 358 F.3d at 880. According to the Federal Circuit, the lower court improperly limited the term to  
7 analog signals, the only commercially used signals at the pertinent time, because a person of  
8 ordinary skill in the art had knowledge of digital signals as well. *Id.* The Federal Circuit held that  
9 the lower court’s approach, which mirrors Apple’s in this case, was improper because not even the  
10 dominance of analog signals at the time of invention warranted importing a limitation not found in  
11 the intrinsic record. *Id.* The pertinent inquiry is the knowledge of the person of ordinary skill in  
12 the art, not commonality. *Id.* As in that case, here, the record establishes that a person of ordinary  
13 skill in the art had knowledge of both types of applets, and the unmodified term should not be  
14 limited.

15 Lastly, Apple’s assertion that AppleScript applets are operating system independent lacks  
16 credibility. According to Dr. Givargis’s interpretation, all programs, applets, apps, indeed any  
17 computer software is “operating system independent.” Givargis Dep. at 86:12-25; 87:21-88:2 (Ex.  
18 I). Dr. Givargis testified that AppleScript applets, which are operating system dependent, could  
19 be operating system independent because he could write his own, custom computer program that  
20 allows an AppleScript applet to run on a Windows computer or a Linux computer.<sup>3</sup> *Id.* Even if  
21 true, this assertion supports Samsung’s construction that the term “applet” encompasses both  
22 operating system dependent and independent applets. Further, adapting this reasoning would  
23 remove any meaning to the phrases “operating system dependent” and “operating system  
24

25 \_\_\_\_\_  
26 <sup>3</sup> Thus, under Dr. Givargis’s definition, AppleScript applets are simultaneously operating  
27 system independent and operating system dependent. Givargis Dep. at 86:4-17 (Ex. J) (Tipton  
28 Cole’s characterization of AppleScript as operating system dependent does not eliminate the  
possibility of it being operating system independent.).

1 independent,” both of which were known and used by a person of ordinarily skill in the art at the  
2 time of the invention.

3 **IV. CONCLUSION**

4 Nothing in the intrinsic or extrinsic record limits the term “applet” to “operating system  
5 independent” applets. Consequently, the Court should reject Apple’s construction and adopt  
6 Samsung’s construction.

7 DATED: December 29, 2011

Respectfully submitted,

8 QUINN EMANUEL URQUHART &  
9 SULLIVAN, LLP

10  
11 *By/s/ Victoria F. Maroulis*

12 \_\_\_\_\_  
Charles K. Verhoeven

Kevin P.B. Johnson

Victoria F. Maroulis

Michael T. Zeller

13 Attorneys for SAMSUNG ELECTRONICS CO.,  
14 LTD., SAMSUNG ELECTRONICS AMERICA,  
15 INC. and SAMSUNG  
16 TELECOMMUNICATIONS AMERICA, LLC