

# EXHIBIT 1

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LTD., SAMSUNG ELECTRONICS AMERICA,

15 INC. and SAMSUNG

TELECOMMUNICATIONS AMERICA, LLC

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.

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S NOTICE OF MOTION AND  
MOTION TO COMPEL APPLE TO  
PRODUCE DOCUMENTS AND THINGS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: January 18, 2012

Time: 10:00 a.m.

Place: Courtroom 5, 4th Floor

Judge: Hon. Paul S. Grewal

**[PROPOSED] PUBLIC REDACTED  
VERSION**

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on January 18, 2012 at 10:00 a.m., or as soon thereafter as  
4 the matter may be heard by the Honorable Paul S. Grewal in Courtroom 5, United States District  
5 Court for the Northern District of California, Robert F. Peckham Federal Building, 280 South 1st  
6 Street, San Jose, CA 95113, Samsung Electronics Co., Ltd., Samsung Electronics America, Inc.,  
7 and Samsung Telecommunications America, LLC (collectively “Samsung”) move the Court for an  
8 order compelling Apple Inc. (“Apple”) to produce documents and things responsive to Samsung’s  
9 Requests for Production by January 31, 2012 and to produce deposition dates for all noticed  
10 depositions no later than January 22, 2012.

11 This motion is based on this notice of motion and supporting memorandum of points and  
12 authorities; the supporting declaration of Diane C. Hutnyan and exhibits attached thereto; and such  
13 other written or oral argument as may be presented at or before the time this motion is deemed  
14 submitted by the Court.

15 **RELIEF REQUESTED**

16 Pursuant to Federal Rule of Civil Procedure 37(a)(1), Samsung seeks an order compelling  
17 Apple to produce, by January 31, 2012, the following categories of documents and things, as set  
18 forth in more below in this Motion:

- 19 1. all source code and other technical documents showing the operation of the  
20 allegedly infringing product features, including all those corresponding to the  
21 baseband processors incorporated in Apple’s products, as required by Patent Local  
22 Rule 3-4(a);
- 23 2. all source code and other technical documents related to known prior art to the  
24 asserted patents, as required by Patent Local Rule 3-2(a);
- 25 3. all emails and documents showing Apple’s analysis and consideration of Samsung  
26 and Samsung products, including those resulting from a reasonable search of  
27 documents for the party (Samsung) and products at issue, and their aliases;
- 28

4. all design history documents, including mechanical outlines (“MCOs”), prototypes, whether complete or not, physical models, sketchbooks, and other documents relevant to the validity of Apple’s design patents, asserted trademark and trade dress rights.
5. all survey and marketing documents related to Apple's alleged design and utility patents, trade dress, and trademarks; and
6. all financial documents, relevant to showing the alleged value, or lack thereof, of Apple’s asserted patents;

Samsung also seeks an order compelling Apple to provide, by January 22, 2012, dates for each of the individually noticed fact witnesses and for witnesses to testify on the topics in Samsung's First 30(b)(6) Notice.

#### **SAMSUNG’S CIVIL L.R. 37-2 STATEMENT**

Pursuant to Civil L.R. 37-2, Samsung’s discovery requests to Apple are set forth in full below along with Apple’s responses and objections:

#### **SAMSUNG’S REQUEST FOR PRODUCTION NO. 98:**

All DOCUMENTS and things relating to any information, including patents, publications, prior knowledge, public uses, sales, or offers for sale, that may constitute, contain, disclose, refer to, relate to, or embody any PRIOR ART to any alleged invention claimed by the APPLE IP.

#### **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 98:**

Apple objects to the phrase “relating to any information” as vague and ambiguous, and the request is vague and ambiguous to the extent it seeks information regarding “PRIOR ART” for Apple trademarks and trade dress. Apple objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, especially because it requests “all DOCUMENTS and things.” Apple objects to this request as calling for information that is not relevant to the claims in this case to the extent it seeks information regarding patents and patent claims not asserted by Apple. Apple objects to this

1 request to the extent it seeks production of documents that: (i) are protected from discovery by the  
2 attorney-client privilege or the work product doctrine, or any other applicable privilege or  
3 immunity; (ii) are outside of Apple's possession, custody, or control; (iii) would require Apple to  
4 draw a legal conclusion to respond; (iv) can be obtained as easily by Samsung, are already in  
5 Samsung's possession, or are publicly available; or (v) would be duplicative of the production  
6 sought in Requests Nos. 81, 92, 96, or 97.

7 Subject to these objections, Apple is willing to meet and confer to discuss the scope and  
8 relevance of the documents sought by Samsung.

9 Source Code/Technical Documents

10 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 39:**

11 All DOCUMENTS relating to any Software used to operate or enable any accused  
12 functionality of any of the APPLE ACCUSED PRODUCTS, including but not limited to release  
13 notes, algorithms, flowcharts, diagrams, notes, and manuals.

14 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

15 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
16 calculated to lead to the discovery of admissible evidence. Apple further objects to the term  
17 "relating to" to the extent that it fails to provide reasonable particularity as to the scope of the  
18 documents sought. Apple further objects to this request to the extent that it seeks documents and  
19 things protected from disclosure by the attorney-client privilege, work product doctrine, joint  
20 defense or common interest privilege, or other applicable privilege, doctrine, or immunity.

21 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
22 willing to meet and confer to discuss the scope and relevance of the documents sought by  
23 Samsung.

24 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 194:**

25 Documents sufficient to show each Baseband Processor incorporated in each APPLE  
26 ACCUSED PRODUCT.

27 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 194:**

28



1 Apple objects to this request to the extent that it seeks the production of documents that are  
2 publicly available. Apple further objects to this request to the extent that it seeks documents  
3 outside of Apple's possession, custody, or control.

4 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
5 produced or will produce responsive, non-privileged documents in its possession, custody, or  
6 control located after a reasonable search that are sufficient to show to the requested information.

7 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 195:**

8 All Software used to operate or enable the function of every Baseband Processor  
9 incorporated into each APPLE ACCUSED PRODUCT that performs any part of the functions of a  
10 Baseband Processor, whether stored on the Baseband Processor itself or in external memory.

11 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 195:**

12 Apple objects to this request as vague, ambiguous, and unintelligible, in particular with  
13 respect to the use of the phrase "functions of a Baseband Processor" and the term "external  
14 memory." Apple further objects to this request on grounds that it is overly broad, unduly  
15 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
16 especially insofar as it seeks "All Software" which performs "any part" of the functions of a  
17 Baseband Processor. Apple further objects to this request to the extent that it seeks documents and  
18 things that are not within Apple's possession, custody, or control.

19 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
20 willing to meet and confer to discuss the meaning, scope, and relevance of Samsung's request.

21 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 196:**

22 All Executable Software used to operate or enable the function of every Baseband  
23 Processor incorporated into the APPLE ACCUSED PRODUCTS that performs any part of the  
24 functions of a Baseband Processor, whether stored on the Baseband Processor itself or in external  
25 memory.

26 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 196:**

27 Apple objects to this request as vague, ambiguous, and unintelligible, in particular with  
28 respect to the use of the phrase "functions of a Baseband Processor" and the term "external

1 memory.” Apple further objects to this request on grounds that it is overly broad, unduly  
2 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
3 especially insofar as it seeks “All Executable Software” which performs “any part” of the  
4 functions of a Baseband Processor. Apple further objects to this request to the extent that it seeks  
5 documents and things that are not within Apple’s possession, custody, or control.

6 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
7 willing to meet and confer to discuss the meaning, scope, and relevance of Samsung’s request.

8 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 200:**

9 All Documents concerning the modification or customization of any Software of any  
10 Baseband Processor, including but not limited to modification performed by Apple or at Apple’s  
11 direction.

12 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 200:**

13 Apple objects to the phrase “modification or customization” as vague and ambiguous.  
14 Apple further objects to this request on grounds that it is overly broad, unduly burdensome, and  
15 not reasonably calculated to lead to the discovery of admissible evidence, especially insofar as it  
16 seeks documents relating to the “modification or customization” of Baseband Processors not at  
17 issue in this lawsuit. Apple further objects to this request to the extent that it seeks documents  
18 outside of Apple’s possession, custody, or control.

19 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
20 willing to meet and confer to discuss the scope and relevance of Samsung’s request.

21 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 201:**

22 All Documents prepared by or at the direction of any Baseband Processor manufacturer or  
23 supplier concerning the functionality of any Baseband Processor incorporated or used in an  
24 APPLE ACCUSED PRODUCT.

25 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 201:**

26 Apple objects to this request to the extent that it seeks documents outside of Apple’s  
27 possession, custody, or control. Apple further objects to this request on grounds that it is overly  
28 broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible

1 evidence, especially insofar as this request seeks documents describing functionality not at issue in  
2 this lawsuit.

3 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
4 produced or will produce responsive, non-privileged samples of documents in its possession,  
5 custody, or control, if any, located after a reasonable search, regarding the accused functionality.

6 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 202:**

7 All Documents reflecting Communications with any manufacturer or supplier of any  
8 Baseband Processor relating to the Baseband Processor, the Software used therein, or Executable  
9 Software used therein.

10 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 202:**

11 Apple objects to the term “reflecting” as vague and ambiguous and failing to identify with  
12 sufficient particularity the documents sought. Apple further objects to this request on grounds that  
13 it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of  
14 admissible evidence, especially insofar as this request seeks documents relating to Baseband  
15 Processors not at issue in this lawsuit. Apple further objects to this request to the extent that it  
16 seeks the production of documents that are protected from discovery by the attorney-client  
17 privilege, work product doctrine, joint defense or common interest privilege, or any other  
18 applicable privilege, doctrine, or immunity. Apple further objects to this request to the extent that  
19 it seeks the production of documents that are subject to a confidentiality or nondisclosure  
20 agreement or governed by a protective order preventing its production.

21 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
22 willing to meet and confer to discuss the scope and relevance of Samsung’s request.

23 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 203:**

24 All specifications and datasheets for each Baseband Processor in each APPLE ACCUSED  
25 PRODUCT.

26 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 203:**

27 Apple objects to the term “datasheets” as vague and ambiguous and failing to identify with  
28 sufficient particularity the documents sought. Apple further objects to this request on grounds that

1 it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of  
2 admissible evidence. Apple further objects to this request to the extent that it seeks documents  
3 outside of Apple's possession, custody, or control.

4 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
5 produced or will produce relevant, non-privileged documents in its possession, custody, or control  
6 located after a reasonable search that are responsive to this request.

7 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 204:**

8 All technical documents describing the structure, function, and/or operation of each  
9 Baseband Processor used in each APPLE ACCUSED PRODUCT.

10 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 204:**

11 Apple objects to this request on grounds that it is overly broad, unduly burdensome, and  
12 not reasonably calculated to lead to the discovery of admissible evidence, especially insofar as this  
13 request seeks documents describing functionality not at issue in this lawsuit. Apple further objects  
14 to this request to the extent that it seeks documents outside of Apple's possession, custody, or  
15 control.

16 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
17 produced or will produce relevant, non-privileged documents in its possession, custody, or control  
18 located after a reasonable search that are responsive to this request.

19 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 205:**

20 An electronic copy of source code or software code used to operate or enable each  
21 Baseband Processor used in each APPLE ACCUSED PRODUCT.

22 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 205:**

23 Apple objects to the phrase "used to operate or enable" as vague and ambiguous. Apple  
24 further objects to this request on grounds that it is overly broad, unduly burdensome, and not  
25 reasonably calculated to lead to the discovery of admissible evidence. Apple further objects to this  
26 request to the extent that it seeks documents outside of Apple's possession, custody, or control.

27 Subject to and without waiving the foregoing General and Specific Objections, and subject  
28 to any source code provisions of the interim protective order and the protective order that is

1 currently being negotiated, Apple has made or will make available for inspection source code or  
2 software code in its possession, custody, or control, if any, located after a reasonable search,  
3 regarding the accused functionality.

4 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 206:**

5 Hardware description languages (HDL) code for each Baseband Processor used in each  
6 APPLE ACCUSED PRODUCT.

7 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 206:**

8 Apple objects to this request to the extent that it seeks documents outside of Apple's  
9 possession, custody, or control. Apple further objects to this request on grounds that it is overly  
10 broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible  
11 evidence, especially insofar as this request seeks code unrelated to the accused functionality in the  
12 Baseband Processors.

13 Subject to and without waiving the foregoing General and Specific Objections, Apple does  
14 not have HDL code responsive to this request.

15 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 207:**

16 Register programming manuals for each Baseband Processor used in each APPLE  
17 ACCUSED PRODUCT.

18 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 207:**

19 Apple objects to the term "register programming manuals" as vague and ambiguous. Apple  
20 further objects to this request to the extent that it seeks documents outside of Apple's possession,  
21 custody, or control. Apple further objects to this request on grounds that it is overly broad, unduly  
22 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

23 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
24 willing to meet and confer to discuss the scope and relevance of Samsung's request.

25 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 208:**

26 All documents describing the functions and algorithms performed by the software or  
27 hardware used to operate or enable each Baseband Processor used in each APPLE ACCUSED  
28 PRODUCT.

1 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 208:**

2 Apple objects to the phrase “used to operate or enable” as vague and ambiguous. Apple  
3 further objects to this request on grounds that it is overly broad, unduly burdensome, and not  
4 reasonably calculated to lead to the discovery of admissible evidence, especially insofar as this  
5 request seeks documents describing functions and algorithms unrelated to the accused  
6 functionality in the Baseband Processors. Apple objects to this request to the extent that it seeks  
7 documents outside of Apple’s possession, custody, or control.

8 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
9 willing to meet and confer to discuss the scope and relevance of Samsung’s request.

10 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 209:**

11 All build instructions associated with the software used to operate or enable each Baseband  
12 Processor used in each APPLE ACCUSED PRODUCT.

13 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 209:**

14 Apple objects to the term “build instructions” and the phrases “associated with the  
15 software” and “used to operate or enable” as vague and ambiguous. Apple further objects to this  
16 request on grounds that it is overly broad, unduly burdensome, and not reasonably calculated to  
17 lead to the discovery of admissible evidence, especially insofar as this request seeks documents  
18 and things pertaining to software which is unrelated to the accused functionality in the Baseband  
19 Processors. Apple further objects to this request to the extent that it seeks documents outside of  
20 Apple’s possession, custody, or control.

21 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
22 willing to meet and confer to discuss the meaning, scope, and relevance of Samsung’s request.

23 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 210:**

24 All documents or materials regarding the firmware architecture for the Baseband Processor  
25 and/or Executable Software used in each APPLE ACCUSED PRODUCT.

26 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 210:**

27 Apple objects to the term “firmware architecture” as vague and ambiguous. Apple further  
28 objects to this request on grounds that it is overly broad, unduly burdensome, and not reasonably

1 calculated to lead to the discovery of admissible evidence, especially insofar as this request seeks  
2 documents and things pertaining to firmware or software which is unrelated to the accused  
3 functionality in the Baseband Processors. Apple further objects to this request to the extent that it  
4 seeks documents outside of Apple's possession, custody, or control.

5 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
6 produced or will produce responsive, non-privileged documents in its possession, custody, or  
7 control, if any, located after a reasonable search, sufficient to show the firmware pertaining to the  
8 accused functionality.

9 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 212:**

10 All documents regarding the transmission of images, messages, and addresses by the  
11 APPLE ACCUSED PRODUCTS, including by email or multimedia message.

12 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 212:**

13 Apple objects to Samsung's use of the term "regarding" as vague and ambiguous and  
14 failing to identify with sufficient particularity the documents sought. Apple further objects to this  
15 request on grounds that it is overly broad, unduly burdensome, and not reasonably calculated to  
16 lead to the discovery of admissible evidence, especially insofar as this request seeks documents  
17 describing functionality not at issue in this lawsuit.

18 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
19 produced or will produce responsive, non-privileged documents in its possession, custody, or  
20 control, if any, located after a reasonable search, sufficient to show the functionality of the accused  
21 products with respect to transmission of images, messages, and addresses.

22 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 213:**

23 All documents regarding image processing by the APPLE ACCUSED PRODUCTS,  
24 including capture, processing, storage, display, and transmission of images, messages and  
25 addresses, especially insofar as this request seeks documents describing functionality not at issue  
26 in this lawsuit.

27 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 213:**

28



1 Apple objects to Samsung's use of the term "regarding" as vague and ambiguous and  
2 failing to identify with sufficient particularity the documents sought. Apple further objects to the  
3 term "image processing" as vague and ambiguous. Apple further objects to this request on grounds  
4 that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery  
5 of admissible evidence.

6 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
7 produced or will produce responsive, non-privileged documents in its possession, custody, or  
8 control, if any, located after a reasonable search, sufficient to show the image processing  
9 functionality of the accused products.

10 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 214:**

11 All documents regarding the "Mail," "Photos," and "Camera" applications for the APPLE  
12 ACCUSED PRODUCTS.

13 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 214:**

14 Apple objects to Samsung's use of the term "regarding" as vague and ambiguous and  
15 failing to identify with sufficient particularity the documents sought. Apple further objects to this  
16 request on grounds that it is overly broad, unduly burdensome, and not reasonably calculated to  
17 lead to the discovery of admissible evidence, especially insofar as this request seeks documents  
18 describing functionality not at issue in this lawsuit.

19 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
20 willing to meet and confer to discuss the scope and relevance of Samsung's request.

21 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 215:**

22 All documents regarding any Software or portions of Software for the APPLE ACCUSED  
23 PRODUCTS that transmits images, messages, and addresses by email or multimedia messages,  
24 including the design and development of this Software.

25 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 215:**

26 Apple objects to Samsung's use of the term "regarding" as vague and ambiguous and  
27 failing to identify with sufficient particularity the documents sought. Apple objects to this request  
28 on grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the



1 discovery of admissible evidence, especially insofar as this request seeks documents relating to  
2 software not at issue in this lawsuit.

3 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
4 willing to meet and confer to discuss the scope and relevance of Samsung's request.

5 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 216:**

6 All documents regarding any Software or portions of Software for the APPLE ACCUSED  
7 PRODUCTS that processes images, including any Software that captures, processes, stores, and  
8 displays images.

9 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 216:**

10 Apple objects to Samsung's use of the term "regarding" as vague and ambiguous and  
11 failing to identify with sufficient particularity the documents sought. Apple further objects to the  
12 phrase "processes images" as vague and ambiguous. Apple further objects to this request on  
13 grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the  
14 discovery of admissible evidence, especially insofar as this request seeks documents relating to  
15 software not at issue in this lawsuit.

16 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
17 willing to meet and confer to discuss the scope and relevance of Samsung's request.

18 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 217:**

19 All documents regarding any Hardware or portions of Hardware in the APPLE ACCUSED  
20 PRODUCTS that transmits images, messages, and addresses by email or multimedia messages,  
21 including the design and development of this Hardware.

22 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 217:**

23 Apple objects to Samsung's use of the term "regarding" as vague and ambiguous and  
24 failing to identify with sufficient particularity the documents sought. Apple further objects to this  
25 request on grounds that it is overly broad, unduly burdensome, and not reasonably calculated to  
26 lead to the discovery of admissible evidence, especially insofar as this request seeks documents  
27 relating to hardware not at issue in this lawsuit.

28

1 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
2 willing to meet and confer to discuss the scope and relevance of Samsung's request.

3 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 218:**

4 All documents regarding any Hardware or portions of Hardware in the APPLE ACCUSED  
5 PRODUCTS that processes images, including any Hardware that captures, processes, stores, and  
6 displays images.

7 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 218:**

8 Apple objects to Samsung's use of the term "regarding" as vague and ambiguous and  
9 failing to identify with sufficient particularity the documents sought. Apple further objects to the  
10 phrase "processes images" as vague and ambiguous. Apple further objects to this request on  
11 grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the  
12 discovery of admissible evidence, especially insofar as this request seeks documents relating to  
13 hardware not at issue in this lawsuit.

14 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
15 willing to meet and confer to discuss the scope and relevance of Samsung's request.

16 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 232:**

17 All documents, including but not limited to software, source code, touch screen hardware  
18 diagrams, prototypes, and operational product exemplars from or relating to FingerWorks,  
19 including but not limited to documents related to the APPLE PATENTS-IN-SUIT, FingerWorks'  
20 products, FingerWorks' potential products, research and/or development, and papers sufficient to  
21 show Apple's acquisition of FingerWorks.

22 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 232:**

23 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
24 calculated to lead to the discovery of admissible evidence, including without limitation because it  
25 seeks documents related to products, components and/or functionality not at issue in this lawsuit.  
26 Apple objects that the request is vague and unclear, in particular as it appears to ask for "all  
27 documents" with no limiting language. Apple further objects to the term "relating to" to the extent  
28 that it fails to provide reasonable particularity as to the scope of the documents sought. Apple

1 further objects to this request to the extent that it purports to require the production of documents  
2 and things protected from disclosure by the attorney-client privilege, attorney work product  
3 doctrine, joint defense or common interest privilege, or any other applicable privilege, doctrine, or  
4 immunity.

5 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
6 produced or will produce responsive, non-privileged documents in its possession, custody, or  
7 control, if any, located after a reasonable search, regarding FingerWorks' products, research and  
8 development, sufficient to show Apple's acquisition of FingerWorks.

9 NeXT OS Documents

10 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 233:**

11 A fully operational exemplar of a NeXTcube workstation computer running the  
12 NeXTSTEP Operating System, version 3.1; or, if version 3.1 is unavailable, version 3.0.

13 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 233:**

14 Apple objects to this request as not reasonably calculated to lead to the discovery of  
15 admissible evidence, including without limitation because it seeks an exemplar of a product that  
16 was manufactured roughly twenty years ago and is unrelated to this lawsuit. Apple objects further  
17 to this request to the extent it seeks items that are i) outside of Apple's possession, custody, or  
18 control; or (ii) can be obtained as easily by Samsung or are publicly available.

19 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
20 willing to meet and confer to discuss the scope and relevance of the documents and things sought  
21 by Samsung.

22 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 234:**

23 A fully operational exemplar of a NeXTstation workstation computer running the  
24 NeXTSTEP Operating System, version 3.1; or, if version 3.1 is unavailable, version 3.0.

25 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 234:**

26 Apple objects to this request as not reasonably calculated to lead to the discovery of  
27 admissible evidence, including without limitation because it seeks an exemplar of a product that  
28 was manufactured roughly twenty years ago and is unrelated to this lawsuit. Apple objects further

1 to this request to the extent it seeks items that are i) outside of Apple's possession, custody, or  
2 control; or (ii) can be obtained as easily by Samsung or are publicly available.

3 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
4 willing to meet and confer to discuss the scope and relevance of the documents and things sought  
5 by Samsung.

6 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 235:**

7 A fully operational and installable copy of the executable software for NeXTSTEP  
8 Operating System, version 3.1; or, if version 3.1 is unavailable, version 3.0.

9 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 235:**

10 Apple objects to this request as not reasonably calculated to lead to the discovery of  
11 admissible evidence, including without limitation because it seeks an exemplar of a product that  
12 was manufactured roughly twenty years ago and is unrelated to this lawsuit. Apple objects further  
13 to this request to the extent it seeks items that are i) outside of Apple's possession, custody, or  
14 control; or (ii) can be obtained as easily by Samsung or are publicly available.

15 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
16 willing to meet and confer to discuss the scope and relevance of the documents and things sought  
17 by Samsung.

18 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 236:**

19 An electronic copy of all source code and software code for NeXTSTEP Operating  
20 System, versions 3.0 and 3.1.

21 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 236:**

22 Apple objects to this request as not reasonably calculated to lead to the discovery of  
23 admissible evidence, including without limitation because it seeks an exemplar of a product that  
24 was manufactured roughly twenty years ago and is unrelated to this lawsuit. Apple objects further  
25 to this request to the extent it seeks items that are i) outside of Apple's possession, custody, or  
26 control; or (ii) can be obtained as easily by Samsung or are publicly available.

1 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
2 willing to meet and confer to discuss the scope and relevance of the documents and things sought  
3 by Samsung.

4 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 237:**

5 All technical documents, user guides, and manuals describing the function or operation of  
6 the NeXTSTEP Operating System, versions 3.0 and 3.1.

7 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 237:**

8 Apple objects to this request as not reasonably calculated to lead to the discovery of  
9 admissible evidence, including without limitation because it seeks an exemplar of a product that  
10 was manufactured roughly twenty years ago and is unrelated to this lawsuit. Apple objects further  
11 to this request to the extent it seeks items that are i) outside of Apple's possession, custody, or  
12 control; or (ii) can be obtained as easily by Samsung or are publicly available.

13 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
14 willing to meet and confer to discuss the scope and relevance of the documents sought by  
15 Samsung.

16 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 238:**

17 Documents sufficient to identify all persons involved in the design and coding of the  
18 NeXTSTEP application dock, the icon bar on the right side of the NeXTSTEP Operating System,  
19 version 3.0 and 3.1, that allows a user to interact with the program applications associated with  
20 each icon.

21 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 238:**

22 Apple objects to this request as not reasonably calculated to lead to the discovery of  
23 admissible evidence, including without limitation because it seeks information regarding products  
24 that were manufactured roughly twenty years ago and are unrelated to this lawsuit. Apple objects  
25 further to this request to the extent it seeks documents that are outside of Apple's possession,  
26 custody, or control.

1 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
2 willing to meet and confer to discuss the scope and relevance of the documents sought by  
3 Samsung.

4 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 239:**

5 All documents and things relating to the NeXTSTEP application dock, NeXTcube,  
6 NeXTstation, all versions of the NeXTSTEP Operating System, NeXT Computer, Inc., (a.k.a.  
7 NeXT Software, Inc., or NeXT, Inc.) or subsidiaries of NeXT Computer, Inc., produced to  
8 Motorola in Apple, Inc. v. Motorola, Inc., Case No. 10-CV-662 in the Western District of  
9 Wisconsin.

10 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 239:**

11 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
12 calculated to lead to the discovery of admissible evidence, including without limitation because it  
13 seeks documents related to product, components and/or functionality not at issue in this lawsuit.  
14 Apple further objects to this request because it is improper for Samsung to use this lawsuit as a  
15 means to obtain discovery pertaining to other proceedings. Apple further objects to the term  
16 "relating to" to the extent that it fails to provide reasonable particularity as to the scope of the  
17 documents sought. Apple objects further to this request to the extent it seeks documents and things  
18 that are outside of Apple's possession, custody, or control.

19 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
20 willing to meet and confer to discuss the scope and relevance of the documents and things sought  
21 by Samsung.

22 **Surveys and Marketing Documents**

23 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 29:**

24 All DOCUMENTS relating to the size or potential size of the market for each of the  
25 APPLE ACCUSED PRODUCTS.

26 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

27 Apple objects to this request on the grounds that it is overly broad, unduly burdensome,  
28 vague, and ambiguous, and seeks information that is neither relevant nor reasonably calculated to

1 lead to the discovery of admissible evidence. Apple further objects to the term “relating” to the  
2 extent that it fails to provide reasonable particularity as to the scope of the documents sought.  
3 Apple further objects to this request on the grounds that it is unlimited in time and geography.  
4 Apple further objects to this request to the extent that it purports to require the production of  
5 documents and things protected from disclosure by the attorney-client privilege, attorney work  
6 product doctrine, joint defense or common interest privilege, or any other applicable privilege,  
7 doctrine, or immunity.

8         Subject to and without waiving the foregoing General and Specific Objections, Apple has  
9 produced or will produce responsive, non-privileged documents in its possession, custody, or  
10 control, if any, located after a reasonable search as discussed in more detail above.

11 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 44:**

12         All DOCUMENTS and things concerning the market or demand for the APPLE  
13 ACCUSED PRODUCTS.

14 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

15         Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
16 calculated to lead to the discovery of admissible evidence. Apple further objects to the phrase  
17 “market or demand” as vague and ambiguous. Apple further objects to the term “concerning” to  
18 the extent that it fails to provide reasonable particularity as to the scope of the documents sought.  
19 Apple further objects to this request to the extent it requests documents not in Apple’s possession,  
20 custody, or control. Apple further objects to this request to the extent it is not limited as to time or  
21 geography. Apple further objects to this request to the extent that it purports to require the  
22 production of documents and things protected from disclosure by the attorney-client privilege,  
23 attorney work product doctrine, joint defense or common interest privilege, or any other applicable  
24 privilege, doctrine, or immunity.

25         Subject to and without waiving the foregoing General and Specific Objections, Apple has  
26 produced or will produce responsive, non-privileged documents in its possession, custody, or  
27 control, if any, located after a reasonable search, sufficient to show accused functionality.

28 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 130:**



1 All DOCUMENTS, COMMUNICATIONS and things concerning any analyses, studies,  
2 reports, memoranda, opinions, advice, communications or correspondence by APPLE, regarding  
3 any commercialization any of the APPLE PATENTS-IN-SUIT or APPLE instrumentalities,  
4 including marketing plans, market demand or market share analysis (including both projected and  
5 actual).

6 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 130:**

7 Apple objects to the term “concerning” to the extent that it fails to provide reasonable  
8 particularity as to the scope of the documents sought. Apple objects to the phrases “concerning  
9 any analyses, studies, reports, memoranda, opinions, advice, communications or correspondence”  
10 and “regarding any commercialization [sic] any of the APPLE PATENTS-IN-SUIT or APPLE  
11 instrumentalities” as vague and ambiguous. Apple objects to this request as overly broad, unduly  
12 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
13 especially because it requests “all DOCUMENTS, COMMUNICATIONS and things.” Apple  
14 objects to this request as calling for information that is not relevant to the claims in this case to the  
15 extent it seeks information regarding patents and patent claims not asserted by Apple. Apple  
16 objects to this request to the extent it seeks production of documents that: (i) would require Apple  
17 to draw a legal conclusion to respond; (ii) can be obtained as easily by Samsung, are already in  
18 Samsung’s possession, or are publicly available; (iii) are subject to a confidentiality or  
19 nondisclosure agreement or governed by a protective order preventing its production; or (iv) are  
20 subject to a confidentiality or non-disclosure agreement or governed by a protective order  
21 preventing its production.

22 Subject to these objections, Apple is willing to meet and confer to discuss the scope and  
23 relevance of the documents sought by Samsung.

24 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 147:**

25 All DOCUMENTS supporting, refuting, or otherwise relating to Apple’s contention that  
26 any element or combination of elements of the APPLE TRADE DRESS and APPLE  
27 TRADEMARKS have acquired secondary meaning.

28 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 147:**



1 Apple objects to the phrase “supporting, refuting, or otherwise relating to Apple’s  
2 contention” as vague and ambiguous. Apple objects to this request as overly broad, unduly  
3 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
4 especially because it requests “all DOCUMENTS.” Apple objects to this request to the extent it  
5 seeks production of documents that: (i) are protected from discovery by the attorney-client  
6 privilege or the work product doctrine, or any other applicable privilege or immunity; (ii) are not  
7 relevant to the claims or defenses at issue in this case; (iii) are outside of Apple’s possession,  
8 custody, or control; (iv) would require Apple to draw a legal conclusion to respond; or (v) can be  
9 obtained as easily by Samsung, are already in Samsung’s possession, or are publicly available.

10 Apple further objects to Samsung’s request as overbroad to the extent it purports to require  
11 Apple to conduct a search for documents that is more extensive than is reasonable under the  
12 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
13 Apple has produced or will produce responsive, non-privileged documents in its possession,  
14 custody, or control, if any, located after a reasonable search as discussed in more detail above.

15 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 148:**

16 All DOCUMENTS supporting, refuting, or otherwise relating to Apple’s contention that  
17 any element or combination of elements of the APPLE TRADE DRESS and APPLE  
18 TRADEMARKS are inherently distinctive.

19 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 148:**

20 Apple objects to the phrase “supporting, refuting, or otherwise relating to Apple’s  
21 contention” as vague and ambiguous. Apple objects to this request as overly broad, unduly  
22 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
23 especially because it requests “all DOCUMENTS.” Apple objects to this request to the extent it  
24 seeks production of documents that: (i) are protected from discovery by the attorney-client  
25 privilege or the work product doctrine, or any other applicable privilege or immunity; (ii) are not  
26 relevant to the claims or defenses at issue in this case; (iii) are outside of Apple’s possession,  
27 custody, or control; (iv) would require Apple to draw a legal conclusion to respond; or (v) can be  
28 obtained as easily by Samsung, are already in Samsung’s possession, or are publicly available.

1 Apple further objects to Samsung's request as overbroad to the extent it purports to require  
2 Apple to conduct a search for documents that is more extensive than is reasonable under the  
3 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
4 Apple has produced or will produce responsive, non-privileged documents in its possession,  
5 custody, or control, if any, located after a reasonable search as discussed in more detail above.

6 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 162:**

7 All DOCUMENTS relating to Apple's contention that SAMSUNG is diluting or likely to  
8 dilute the APPLE TRADE DRESS.

9 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 162:**

10 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
11 calculated to lead to the discovery of admissible evidence, especially because it requests "all  
12 DOCUMENTS." Apple objects to this request to the extent it seeks production of documents that:  
13 (i) are protected from discovery by the attorney-client privilege or the work product doctrine, or  
14 any other applicable privilege or immunity; (ii) are outside of Apple's possession, custody, or  
15 control; or (iii) can be obtained as easily by Samsung, are already in Samsung's possession, or are  
16 publicly available.

17 Apple further objects to Samsung's request as overbroad to the extent it purports to require  
18 Apple to conduct a search for documents that is more extensive than is reasonable under the  
19 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
20 Apple has produced or will produce responsive, non-privileged documents in its possession,  
21 custody, or control, if any, located after a reasonable search as discussed in more detail above.

22 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 163:**

23 DOCUMENTS sufficient to show all advertising expenditures, by type and by product, for  
24 the APPLE ACCUSED PRODUCTS since 2007.

25 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 163:**

26 Apple objects to the phrase "advertising expenditures" as vague and ambiguous. Apple  
27 objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead  
28 to the discovery of admissible evidence, especially because it requests "all advertising

1 expenditures.” Apple objects to this request as calling for information that is not relevant to the  
2 claims or defenses at issue in this case.

3 Apple further objects to Samsung’s request as overbroad to the extent it purports to require  
4 Apple to conduct a search for documents that is more extensive than is reasonable under the  
5 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
6 Apple has produced or will produce responsive, non-privileged documents in its possession,  
7 custody, or control, if any, located after a reasonable search as discussed in more detail above.

8 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 165:**

9 All DOCUMENTS relating to all studies, including formal or informal analysis,  
10 investigation, surveys, focus groups, consumer research, articles, or other information relating to  
11 consumer confusion or dilution in connection with the SAMSUNG ACCUSED PRODUCTS.

12 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 165:**

13 Apple objects to the phrase “informal analysis” and “information relating to consumer  
14 confusion or dilution in connection with the SAMSUNG ACCUSED PRODUCTS” as vague and  
15 ambiguous. Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
16 calculated to lead to the discovery of admissible evidence, especially because it requests “all  
17 DOCUMENTS,” and to the extent it requests all documents related to consumer confusion or  
18 dilution “in connection with” Samsung products without limitation to its alleged infringement of  
19 another product or another products infringement of the products. Apple objects to this request to  
20 the extent it seeks production of documents that: (i) are protected from discovery by the attorney-  
21 client privilege or the work product doctrine, or any other applicable privilege or immunity; (ii)  
22 are not relevant to the claims or defenses at issue in this case; (iii) are outside of Apple’s  
23 possession, custody, or control; (iv) would require Apple to draw a legal conclusion to respond; or  
24 (v) can be obtained as easily by Samsung, are already in Samsung’s possession, or are publicly  
25 available.

26 Apple further objects to Samsung’s request as overbroad to the extent it purports to require  
27 Apple to conduct a search for documents that is more extensive than is reasonable under the  
28 circumstances. Subject to and without waiving the foregoing General and Specific Objections,

1 Apple has produced or will produce responsive, non-privileged documents in its possession,  
2 custody, or control, if any, located after a reasonable search as discussed in more detail above.

3 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 169:**

4 All DOCUMENTS that support, refute, or otherwise relate to your contention that any of  
5 the APPLE TRADE DRESS or APPLE TRADEMARKS are distinctive and famous, including the  
6 degree of inherent distinctiveness, the duration and extent of use in connection with your goods  
7 and services, the duration and extent of advertising and publicity of the trade dress/marks, the  
8 geographical extent of the trading area in which the trade dress/marks are used, the channels of  
9 trade for the goods or services with which the trade dress/marks are used, the degree of  
10 recognition of the marks in the trading areas and channels of trade used by You and SAMSUNG,  
11 and the nature and extent of the use of the same or similar trade dress/marks by third parties.

12 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 169:**

13 Apple objects to the phrases “duration and extent of advertising and publicity of the trade  
14 dress/marks, the geographical extent of the trading area in which the trade dress/marks are used”  
15 and “the degree of recognition of the marks in the trading areas and channels of trade used by You  
16 and SAMSUNG” as vague and ambiguous. Apple objects to this request as overly broad, unduly  
17 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
18 especially because it requests “all DOCUMENTS.” Apple objects to this request to the extent it  
19 seeks production of documents that: (i) are protected from discovery by the attorney client  
20 privilege or the work product doctrine, or any other applicable privilege or immunity; (ii) are  
21 outside of Apple’s possession, custody, or control; (iii) would require Apple to draw a legal  
22 conclusion to respond; or (iv) can be obtained as easily by Samsung, are already in Samsung’s  
23 possession, or are publicly available.

24 Apple further objects to Samsung’s request as overbroad to the extent it purports to require  
25 Apple to conduct a search for documents that is more extensive than is reasonable under the  
26 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
27 Apple has produced or will produce responsive, non-privileged documents in its possession,  
28 custody, or control, if any, located after a reasonable search as discussed in more detail above.

1 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 170:**

2 All DOCUMENTS and things relating to any formal or informal trademark or PRIOR  
3 ART-related searches or investigations conducted by, or on behalf of, Apple concerning any of the  
4 APPLE TRADE DRESS, APPLE TRADEMARKS, or APPLE DESIGN PATENTS, including,  
5 but not limited to, any PRIOR ART searches, market studies, surveys, focus groups, or other  
6 studies.

7 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 170:**

8 Apple objects to the terms “informal” and “concerning” as vague and ambiguous and  
9 failing to provide reasonable particularity as to the scope of the documents sought. Apple objects  
10 to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the  
11 discovery of admissible evidence, especially because it requests “all DOCUMENTS and things.”  
12 Apple objects to this request to the extent it seeks production of documents that are protected from  
13 discovery by the attorney-client privilege or the work product doctrine, or any other applicable  
14 privilege or immunity.

15 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
16 produced or will produce responsive, non-privileged documents in its possession, custody, or  
17 control, if any, located after a reasonable search as discussed in more detail above.

18 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 177:**

19 All DOCUMENTS relating to all studies, including formal or informal analysis,  
20 investigation, surveys, focus groups, consumer research, articles, or other information relating to  
21 the APPLE TRADE DRESS and APPLE TRADEMARKS, including the secondary meaning  
22 thereof.

23 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 177:**

24 Apple objects to the phrase “relating to all studies, including formal or informal analysis,  
25 investigation [sic]” as vague and ambiguous. Apple objects to this request as overly broad, unduly  
26 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
27 especially because it requests “all DOCUMENTS.” Apple objects to this request to the extent it  
28 seeks production of documents that: (i) are protected from discovery by the attorney client

1 privilege or the work product doctrine, or any other applicable privilege or immunity; (ii) are not  
2 relevant to the claims or defenses at issue in this case; (iii) are outside of Apple's possession,  
3 custody, or control; (iv) would require Apple to draw a legal conclusion to respond; (v) can be  
4 obtained as easily by Samsung, are already in Samsung's possession, or are publicly available; or  
5 (vi) are subject to a confidentiality or non-disclosure agreement or governed by a protective order  
6 preventing its production.

7 Apple further objects to Samsung's request as overbroad to the extent it purports to require  
8 Apple to conduct a search for documents that is more extensive than is reasonable under the  
9 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
10 Apple has produced or will produce responsive, non-privileged documents in its possession,  
11 custody, or control, if any, located after a reasonable search as discussed in more detail above.

12 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 178:**

13 All DOCUMENTS relating to all studies, including formal or informal analysis,  
14 investigation, surveys, focus groups, consumer research, articles, or other information relating to  
15 the APPLE DESIGN PATENTS.

16 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 178:**

17 Apple objects to the phrase "relating to all studies, including formal or informal analysis,  
18 investigation, surveys, focus groups, consumer research, articles, or other information relating to  
19 the APPLE DESIGN PATENTS" as vague and ambiguous. Apple objects to this request as overly  
20 broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible  
21 evidence, especially because it requests "all DOCUMENTS." Apple objects to this request to the  
22 extent it seeks production of documents that: (i) are protected from discovery by the attorney-  
23 client privilege or the work product doctrine, or any other applicable privilege or immunity; (ii)  
24 are not relevant to the claims or defenses at issue in this case; (iii) are outside of Apple's  
25 possession, custody, or control; (iv) would require Apple to draw a legal conclusion to respond;  
26 (v) can be obtained as easily by Samsung, are already in Samsung's possession, or are publicly  
27 available; or (vi) are subject to a confidentiality or non-disclosure agreement or governed by a  
28 protective order preventing its production.

1 Apple further objects to Samsung's request as overbroad to the extent it purports to require  
2 Apple to conduct a search for documents that is more extensive than is reasonable under the  
3 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
4 Apple has produced or will produce responsive, non-privileged documents in its possession,  
5 custody, or control, if any, located after a reasonable search as discussed in more detail above.

6 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 190:**

7 All advertising plans, media spending reports, return on investment reports concerning (1)  
8 advertisements, (2) consumer research regarding advertisements, and (3) the identity of all third  
9 parties Apple has use to design, generate, review, or disseminate advertisements for the iPhone,  
10 iPad, and iPod touch.

11 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 190:**

12 Apple objects to the term "concerning" to the extent that it fails to provide reasonable  
13 particularity as to the scope of the documents sought. Apple objects to the phrase "concerning (1)  
14 advertisements, (2) consumer research regarding advertisements, and (3) the identity of all third  
15 parties Apple has use to design, generate, review, or disseminate advertisements" as vague and  
16 ambiguous. Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
17 calculated to lead to the discovery of admissible evidence, especially because it requests  
18 "advertising plans, media spending reports, return on investment reports." Apple objects to this  
19 request to the extent it seeks production of documents that: (i) are protected from discovery by the  
20 attorney-client privilege or the work product doctrine, or any other applicable privilege or  
21 immunity; (ii) are outside of Apple's possession, custody, or control; or (iii) can be obtained as  
22 easily by Samsung, are already in Samsung's possession, or are publicly available.

23 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
24 willing to meet and confer to discuss the scope and relevance of the documents sought by  
25 Samsung.

26 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 191:**

27 All DOCUMENTS and things RELATING TO the customers and target consumer groups  
28 to whom Apple has marketed, advertised, promoted, or sold services or goods in connection with



1 any of the APPLE TRADE DRESS or TRADEMARKS, including without limitation, all  
2 documents concerning consumer demographics, behavior, sophistication, buying habits, process of  
3 buying a smart phone or tablet computer, and consumer preferences in electronics.

4 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 191:**

5 Apple objects to the term “concerning” to the extent that it fails to provide reasonable  
6 particularity as to the scope of the documents sought. Apple objects to the phrase “concerning  
7 consumer demographics, behavior, sophistication, buying habits, process of buying a smart phone  
8 or tablet computer, and consumer preferences in electronics” as vague and ambiguous. Apple  
9 objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead  
10 to the discovery of admissible evidence, especially because it requests “all DOCUMENTS and  
11 things.” Apple objects to this request to the extent it seeks production of documents that: (i) are  
12 protected from discovery by the attorney-client privilege or the work product doctrine, or any  
13 other applicable privilege or immunity; (ii) are outside of Apple’s possession, custody, or control;  
14 or (iii) can be obtained as easily by Samsung, are already in Samsung’s possession, or are publicly  
15 available.

16 Apple further objects to Samsung’s request as overbroad to the extent it purports to require  
17 Apple to conduct a search for documents that is more extensive than is reasonable under the  
18 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
19 Apple has produced or will produce responsive, non-privileged documents in its possession,  
20 custody, or control, if any, located after a reasonable search as discussed in more detail above.

21 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 249:**

22 All documents relating to any formal or informal market or consumer testing, surveys,  
23 studies or research conducted, commissioned, or otherwise received by APPLE concerning  
24 phones, tablets and media players, including any version of the iPhone, iPad or iPod Touch, or any  
25 SAMSUNG product.

26 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 249:**

27 ????

28 Financial Documents



1 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 6:**

2 DOCUMENTS, including, any charts, schematics, drawing or figures, sufficient to show  
3 the manufacturer(s) for each APPLE ACCUSED PRODUCT in the past five years, including the  
4 location of manufacture, the volume of manufacture, and the time period during which such  
5 manufacture occurred.

6 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

7 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
8 calculated to lead to the discovery of admissible evidence. Apple further objects to the phrase  
9 “volume of manufacture” as vague and ambiguous. Apple further objects that the term  
10 “manufacturer(s)” is vague and overbroad in context.

11 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
12 willing to meet and confer to discuss the scope and relevance of the documents sought by  
13 Samsung.

14 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 7:**

15 For each sale of an APPLE ACCUSED PRODUCT, DOCUMENTS sufficient to show  
16 when, where, and by whom the APPLE ACCUSED PRODUCT was sold.

17 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

18 Apple objects to this request on the grounds that it is overbroad and unduly burdensome,  
19 and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of  
20 admissible evidence. Apple further objects to this request on the grounds that it is unlimited in  
21 time.

22 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
23 produced or will produce responsive, non-privileged financial data sufficient to show Apple’s U.S.  
24 sales of accused products over the relevant time period.

25 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 8:**

26 DOCUMENTS sufficient to show the place of manufacture and the place of sale for each  
27 unit of each APPLE ACCUSED PRODUCT and the dollar amount of sales associated with such  
28 unit.

1 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

2 Apple objects to this request on the grounds that it is overbroad and unduly burdensome,  
3 and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of  
4 admissible evidence. Apple further objects to this request on the grounds that it is unlimited in  
5 time.

6 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
7 produced or will produce responsive, non-privileged financial data sufficient to show Apple's U.S.  
8 sales of accused products over the relevant time period and non-privileged documents regarding  
9 place of manufacture of such products.

10 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 25:**

11 DOCUMENTS sufficient to determine the following on a monthly or quarterly basis from  
12 April 15, 2005 for the APPLE ACCUSED PRODUCTS, including components thereof:

- 13 a. Total gross and net revenues (by product, customer, period and location);
- 14 b. Total quantity of units sold (by product, customer, period and location);
- 15 c. Cost of goods sold, including but not limited to, direct purchases, direct labor, indirect  
16 and/or overhead costs, and any allocation of those direct, indirect and/or overhead costs to the  
17 APPLE ACCUSED PRODUCTS;
- 18 d. Actual total cost or variances from standard costs;
- 19 e. Gross and net profits; and
- 20 f. All costs other than standard costs, including but not limited to, selling, advertising,  
21 general and administrative expenses, and any allocation of those expenses to the APPLE  
22 ACCUSED PRODUCTS.

23 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

24 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
25 calculated to lead to the discovery of admissible evidence.

26 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
27 produced or will produce responsive, non-privileged documents in its possession, custody, or  
28

1 control, if any, located after a reasonable search, sufficient to show U.S. sales of accused products  
2 over the relevant time period, including information related to revenue and profitability.

3 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 29:**

4 All DOCUMENTS relating to the size or potential size of the market for each of the  
5 APPLE ACCUSED PRODUCTS.

6 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

7 Apple objects to this request on the grounds that it is overly broad, unduly burdensome,  
8 vague, and ambiguous, and seeks information that is neither relevant nor reasonably calculated to  
9 lead to the discovery of admissible evidence. Apple further objects to the term “relating” to the  
10 extent that it fails to provide reasonable particularity as to the scope of the documents sought.  
11 Apple further objects to this request on the grounds that it is unlimited in time and geography.  
12 Apple further objects to this request to the extent that it purports to require the production of  
13 documents and things protected from disclosure by the attorney-client privilege, attorney work  
14 product doctrine, joint defense or common interest privilege, or any other applicable privilege,  
15 doctrine, or immunity.

16 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
17 produced or will produce responsive, non-privileged documents in its possession, custody, or  
18 control, if any, located after a reasonable search as discussed in more detail above.

19 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 42:**

20 All DOCUMENTS relating to the pricing of the APPLE ACCUSED PRODUCTS.

21 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

22 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
23 calculated to lead to the discovery of admissible evidence especially insofar as it seeks documents  
24 relating to technology, components and/or functionality not at issue in this lawsuit. Apple further  
25 objects to this request to the extent it is not limited as to time or geography. Apple further objects  
26 to the term “relating to” to the extent that it fails to provide reasonable particularity as to the scope  
27 of the documents sought.  
28

1 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
2 produced or will produce responsive, non-privileged documents in its possession, custody, or  
3 control, if any, located after a reasonable search as discussed in more detail above.

4 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 43:**

5 All business plans, strategic plans, operating plans, financial plans, sales plans, and capital  
6 or investment plans concerning the APPLE ACCUSED PRODUCTS.

7 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

8 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
9 calculated to lead to the discovery of admissible evidence. Apple further objects to the term  
10 “concerning” to the extent that it fails to provide reasonable particularity as to the scope of the  
11 documents sought. Apple further objects to this request to the extent it is not limited as to time or  
12 geography. Apple further objects to the terms “business plans, strategic plans, operating plans,  
13 financial plans, sales plans, and capital or investment plans” as vague and ambiguous. Apple  
14 further objects to this request to the extent that it purports to require the production of documents  
15 and things protected from disclosure by the attorney-client privilege, attorney work product  
16 doctrine, joint defense or common interest privilege, or any other applicable privilege, doctrine, or  
17 immunity.

18 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
19 produced or will produce responsive, non-privileged documents in its possession, custody, or  
20 control, if any, located after a reasonable search, sufficient to show accused functionality.

21 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 44:**

22 All DOCUMENTS and things concerning the market or demand for the APPLE  
23 ACCUSED PRODUCTS.

24 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

25 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
26 calculated to lead to the discovery of admissible evidence. Apple further objects to the phrase  
27 “market or demand” as vague and ambiguous. Apple further objects to the term “concerning” to  
28 the extent that it fails to provide reasonable particularity as to the scope of the documents sought.

1 Apple further objects to this request to the extent it requests documents not in Apple's possession,  
2 custody, or control. Apple further objects to this request to the extent it is not limited as to time or  
3 geography. Apple further objects to this request to the extent that it purports to require the  
4 production of documents and things protected from disclosure by the attorney-client privilege,  
5 attorney work product doctrine, joint defense or common interest privilege, or any other applicable  
6 privilege, doctrine, or immunity.

7 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
8 produced or will produce responsive, non-privileged documents in its possession, custody, or  
9 control, if any, located after a reasonable search, sufficient to show accused functionality.

10 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 54:**

11 All DOCUMENTS relating to any analysis of Your actual or projected gross profits, net  
12 profits, gross profit margins, and net profit margins in the United States relating to each APPLE  
13 ACCUSED PRODUCT from April 15, 2005 to the present.

14 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

15 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
16 calculated to lead to the discovery of admissible evidence. Apple further objects to the term  
17 "relating to" to the extent that it fails to provide reasonable particularity as to the scope of the  
18 documents sought.

19 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
20 produced or will produce responsive, non-privileged documents in its possession, custody, or  
21 control, if any, located after a reasonable search, sufficient to show financial data regarding U.S.  
22 sales of accused products over the relevant time period, including information related to revenue  
23 and profitability.

24 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 55:**

25 All DOCUMENTS relating to business plans and projections, sales forecasts, or other  
26 business planning relating to the APPLE ACCUSED PRODUCTS.

27 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

28

1 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
2 calculated to lead to the discovery of admissible evidence. Apple further objects to the term  
3 “relating to” to the extent that it fails to provide reasonable particularity as to the scope of the  
4 documents sought. Apple further objects to the terms “business plans and projections” and “other  
5 business planning” as vague and ambiguous. Apple further objects to this request to the extent it is  
6 not limited as to time or geography. Apple further objects to this request to the extent that it  
7 purports to require the production of documents and things protected from disclosure by the  
8 attorney-client privilege, attorney work product doctrine, joint defense or common interest  
9 privilege, or any other applicable privilege, doctrine, or immunity.

10 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
11 produced or will produce responsive, non-privileged documents in its possession, custody, or  
12 control, if any, located after a reasonable search, sufficient to show financial data regarding U.S.  
13 sales of accused products over the relevant time period, including information related to revenue  
14 and profitability.

15 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 69:**

16 DOCUMENTS sufficient to show Your monthly, quarterly, and annual manufacturing or  
17 production volume for the APPLE ACCUSED PRODUCTS for the five years immediately  
18 preceding this request, and the location of such manufacturing or production.

19 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 69:**

20 Apple objects to this request as overly broad, unduly burdensome, and not reasonably  
21 calculated to lead to the discovery of admissible evidence.

22 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
23 willing to meet and confer to discuss the scope and relevance of the documents sought by  
24 Samsung.

25 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 116:**  
26  
27  
28

1 DOCUMENTS sufficient to show any profits or losses on domestic sales of APPLE'S  
2 products incorporating electronic digital media devices, both as individual units and in the  
3 aggregate.

4 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 116:**

5 Apple objects to the phrases "sufficient to show any profits or losses" and "products  
6 incorporating electronic digital media devices" as vague and ambiguous. Apple objects to this  
7 request as overly broad, unduly burdensome, and not reasonably calculated to lead to the  
8 discovery of admissible evidence, especially because it requests documents providing information  
9 on domestic sales of Apple products without limitation to the technology at issue in this case.  
10 Apple objects to this request to the extent it seeks production of documents that: (i) are not  
11 relevant to the claims or defenses at issue in this case; or (ii) are subject to a confidentiality or  
12 non-disclosure agreement or governed by a protective order preventing its production.

13 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
14 willing to meet and confer to discuss the scope and relevance of the documents sought by  
15 Samsung.

16 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 130:**

17 All DOCUMENTS, COMMUNICATIONS and things concerning any analyses, studies,  
18 reports, memoranda, opinions, advice, communications or correspondence by APPLE, regarding  
19 any commercialization any of the APPLE PATENTS-IN-SUIT or APPLE instrumentalities,  
20 including marketing plans, market demand or market share analysis (including both projected and  
21 actual).

22 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 130:**

23 Apple objects to the term "concerning" to the extent that it fails to provide reasonable  
24 particularity as to the scope of the documents sought. Apple objects to the phrases "concerning  
25 any analyses, studies, reports, memoranda, opinions, advice, communications or correspondence"  
26 and "regarding any commercialization [sic] any of the APPLE PATENTS-IN-SUIT or APPLE  
27 instrumentalities" as vague and ambiguous. Apple objects to this request as overly broad, unduly  
28 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,



1 especially because it requests “all DOCUMENTS, COMMUNICATIONS and things.” Apple  
2 objects to this request as calling for information that is not relevant to the claims in this case to the  
3 extent it seeks information regarding patents and patent claims not asserted by Apple. Apple  
4 objects to this request to the extent it seeks production of documents that: (i) would require Apple  
5 to draw a legal conclusion to respond; (ii) can be obtained as easily by Samsung, are already in  
6 Samsung’s possession, or are publicly available; (iii) are subject to a confidentiality or  
7 nondisclosure agreement or governed by a protective order preventing its production; or (iv) are  
8 subject to a confidentiality or non-disclosure agreement or governed by a protective order  
9 preventing its production.

10 Subject to these objections, Apple is willing to meet and confer to discuss the scope and  
11 relevance of the documents sought by Samsung.

12 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 131:**

13 All DOCUMENTS regarding the market for any of the APPLE PATENTS-IN-SUIT  
14 including documents regarding competitors in the industry, prices, revenues, profits, product  
15 designs of any instrumentality that competes with any APPLE instrumentality.

16 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 131:**

17 Apple objects to the phrase “regarding the market” and “any instrumentality that competes  
18 with any APPLE instrumentality” as vague and ambiguous. Apple objects to this request as overly  
19 broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible  
20 evidence, especially because it requests “all DOCUMENTS.” Apple objects to this request to the  
21 extent it seeks production of documents that: (i) are protected from discovery by the attorney-  
22 client privilege or the work product doctrine, or any other applicable privilege or immunity; (ii)  
23 are not relevant to the claims or defenses at issue in this case; (iii) are outside of Apple’s  
24 possession, custody, or control; (iv) can be obtained as easily by Samsung, are already in  
25 Samsung’s possession, or are publicly available; or (v) are subject to a confidentiality or  
26 nondisclosure agreement or governed by a protective order preventing its production.

27 Subject to these objections, Apple is willing to meet and confer to discuss the scope and  
28 relevance of the documents sought by Samsung.



1 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 132:**

2 All DOCUMENTS related to APPLE’S actual and projected net profits or losses on sales,  
3 licenses, distributions or other transfers of any APPLE PATENT-IN-SUIT or APPLE  
4 instrumentality, including all of APPLE’S profit and loss statements.

5 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 132:**

6 Apple objects to the phrases “related to APPLE’S actual and projected net profits or  
7 losses” and “APPLE instrumentality” as vague and ambiguous. Apple objects to this request as  
8 overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of  
9 admissible evidence, especially because it requests “all DOCUMENTS.” Apple objects to this  
10 request to the extent it seeks production of documents that: (i) are protected from discovery by the  
11 attorney-client privilege or the work product doctrine, or any other applicable privilege or  
12 immunity; (ii) are not relevant to the claims or defenses at issue in this case; (iii) are outside of  
13 Apple’s possession, custody, or control; (iv) would require Apple to draw a legal conclusion to  
14 respond; (v) can be obtained as easily by Samsung, are already in Samsung’s possession, or are  
15 publicly available; or (vi) are subject to a confidentiality or non-disclosure agreement or governed  
16 by a protective order preventing its production.

17 Subject to these objections, Apple is willing to meet and confer to discuss the scope and  
18 relevance of the documents sought by Samsung.

19 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 133:**

20 All DOCUMENTS and COMMUNICATIONS concerning business plans, strategic plans,  
21 studies, budgets, forecasts, meetings or presentations related to any of the APPLE PATENTS- IN-  
22 SUIT or to the licensing of any other intellectual property rights held by APPLE.

23 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 133:**

24 Apple objects to this request as vague and ambiguous in its entirety. Apple objects to the  
25 term “concerning” to the extent that it fails to provide reasonable particularity as to the scope of  
26 the documents sought. Apple objects to this request as overly broad, unduly burdensome, and not  
27 reasonably calculated to lead to the discovery of admissible evidence, especially because it  
28 requests “all DOCUMENTS and COMMUNICATIONS” and those “related” to “any other

1 intellectual property rights held by APPLE.” Apple objects to this request to the extent it seeks  
2 production of documents that: (i) are protected from discovery by the attorney-client privilege or  
3 the work product doctrine, or any other applicable privilege or immunity; (ii) are not relevant to  
4 the claims or defenses at issue in this case; (iii) are outside of Apple’s possession, custody, or  
5 control; or (iv) are subject to a confidentiality or non-disclosure agreement or governed by a  
6 protective order preventing its production.

7 Apple further objects to Samsung’s request as overbroad to the extent it purports to require  
8 Apple to conduct a search for documents that is more extensive than is reasonable under the  
9 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
10 Apple has produced or will produce responsive, non-privileged documents in its possession,  
11 custody, or control, if any, located after a reasonable search as discussed in more detail above.

12 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 134:**

13 All DOCUMENTS related to any valuation of any of the APPLE PATENTS-IN-SUIT,  
14 including any appraisals, assessments, evaluations, valuations or opinions regarding the actual or  
15 potential value of any of the APPLE PATENTS-IN-SUIT.

16 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 134:**

17 Apple objects to the phrase “related to any valuation” as vague and ambiguous. Apple  
18 objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead  
19 to the discovery of admissible evidence, especially because it requests “all DOCUMENTS.” Apple  
20 objects to this request to the extent it seeks production of documents that: (i) are protected from  
21 discovery by the attorney-client privilege or the work product doctrine, or any other applicable  
22 privilege or immunity; (ii) are outside of Apple’s possession, custody, or control; (iii) would  
23 require Apple to draw a legal conclusion to respond; (iv) can be obtained as easily by Samsung,  
24 are already in Samsung’s possession, or are publicly available; or (v) are subject to a  
25 confidentiality or non-disclosure agreement or governed by a protective order preventing its  
26 production.

27 Apple further objects to Samsung’s request as overbroad to the extent it purports to require  
28 Apple to conduct a search for documents that is more extensive than is reasonable under the

1 circumstances. Subject to and without waiving the foregoing General and Specific Objections,  
2 Apple has produced or will produce responsive, non-privileged documents in its possession,  
3 custody, or control, if any, located after a reasonable search as discussed in more detail above.

4 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 175:**

5 All analysis, studies, reports, and research relating to the reason for increases or decreases  
6 in Apple profits or market share since 2007.

7 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 175:**

8 Apple objects to the phrase “analysis, studies, reports, and research relating to the reason  
9 for increases or decreases” as vague and ambiguous. Apple objects to this request as overly broad,  
10 unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
11 especially to the extent it seeks “all analysis, studies, reports, and research.” Apple objects to this  
12 request to the extent it seeks production of documents that: (i) are protected from discovery by the  
13 attorney-client privilege or the work product doctrine, or any other applicable privilege or  
14 immunity; (ii) are not relevant to the claims or defenses at issue in this case; (iii) are outside of  
15 Apple’s possession, custody, or control; (iv) can be obtained as easily by Samsung, are already in  
16 Samsung’s possession, or are publicly available; or (v) are subject to a confidentiality or non-  
17 disclosure agreement or governed by a protective order preventing its production.

18 Subject to and without waiving the foregoing General and Specific Objections, Apple is  
19 willing to meet and confer to discuss the scope and relevance of the documents sought by  
20 Samsung.

21 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 252:**

22 Documents sufficient to show the cost to APPLE of all iPhone, iPad and iPod Touch  
23 versions.

24 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 252:**

25 ?????????

26 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 253:**

27 Documents sufficient to show the cost to consumers of all iPhone, iPad, and iPod Touch  
28 versions, including shipping and related costs, and the availability of discounts and coupons.

1 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 253:**

2 ???????????

3 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 254:**

4 Documents sufficient to show the cost to distributors of all iPhone, iPad, and iPod Touch  
5 versions, including shipping and related costs, and the availability of discounts and coupons.

6 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 254:**

7 ???????????????

8 Conception/Reduction to Practice

9 **SAMSUNG’S REQUEST FOR PRODUCTION NO. 83:**

10 All DOCUMENTS and things relating to the conception of any alleged invention claimed  
11 by the APPLE IP, including, without limitation, any documents or things which APPLE contends  
12 corroborate such conception, including, without limitation, laboratory notebooks, schematics,  
13 drawings, specifications, source code, artwork, formulas, and prototypes.

14 **APPLE’S RESPONSE TO REQUEST FOR PRODUCTION NO. 83:**

15 Apple objects to the phrases “relating to the conception of any alleged invention” as vague  
16 and ambiguous, and object to this request as vague and ambiguous to the extent it seeks  
17 information regarding conception of an invention for Apple trademarks and trade dress. Apple  
18 objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead  
19 to the discovery of admissible evidence, especially because it requests “all DOCUMENTS and  
20 things,” and as it calls for information that is not relevant to the claims in this case to the extent it  
21 seeks information regarding patents and patent claims not asserted by Apple. Apple objects to the  
22 production of “laboratory notebooks, schematics, drawings, specifications, source code, artwork,  
23 formulas, and prototypes” without adequate safeguards against unauthorized release of new  
24 product information. Apple objects to this request to the extent it seeks production of documents  
25 that: (i) are protected from discovery by the attorney-client privilege or the work product doctrine,  
26 or any other applicable privilege or immunity, or any other applicable privilege or immunity; (ii)  
27 are outside of Apple’s possession, custody, or control; (iii) would require Apple to draw a legal  
28

1 conclusion to respond; or (iv) can be obtained as easily by Samsung, are already in Samsung's  
2 possession, or are publicly available.

3 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
4 produced or will produce responsive, non-privileged documents in the possession, custody, or  
5 control of the named inventors of Apple's asserted patents currently employed by Apple, if any,  
6 located after a reasonable search, sufficient to show conception of Apple's utility and design  
7 patents at issue.

8 **SAMSUNG'S REQUEST FOR PRODUCTION NO. 86:**

9 All DOCUMENTS and things relating to the reduction to practice of any alleged invention  
10 claimed by the APPLE IP, including, without limitation, any documents or things which APPLE  
11 contends corroborate such reduction to practice.

12 **APPLE'S RESPONSE TO REQUEST FOR PRODUCTION NO. 86:**

13 Apple objects to the phrase "relating to the reduction to practice" as vague and ambiguous,  
14 and the request is vague and ambiguous to the extent it seeks reduction to practice of Apple's  
15 asserted trademark and trade dress rights. Apple objects to this request as overly broad, unduly  
16 burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,  
17 especially because it requests "all DOCUMENTS and things." Apple objects to this request to the  
18 extent it seeks production of documents that: (i) are protected from discovery by the attorney-  
19 client privilege or the work product doctrine, or any other applicable privilege or immunity; (ii)  
20 are outside of Apple's possession, custody, or control; (iii) would require Apple to draw a legal  
21 conclusion to respond; or (iv) can be obtained as easily by Samsung, are already in Samsung's  
22 possession, or are publicly available.

23 Subject to and without waiving the foregoing General and Specific Objections, Apple has  
24 produced or will produce responsive, non-privileged documents in the possession, custody, or  
25 control of the named inventors of Apple's asserted patents currently employed by Apple, if any,  
26 located after a reasonable search, sufficient to show reduction to practice of the Apple utility and  
27 design patents.

28 **SAMSUNG'S PI REQUEST FOR PRODUCTION NO. 1:**

DOCUMENTS RELATING to the conception and reduction to practice of the DESIGN PATENTS and the '381 PATENT.

**APPLE'S RESPONSE TO PI REQUEST FOR PRODUCTION NO. 1:**

Apple incorporates its General Objections. Apple objects to this request to the extent it seeks the production of documents that: (i) are protected from discovery by the attorney-client privilege or the work product doctrine; (ii) are outside of Apple's possession, custody, or control; (iii) would require Apple to draw a legal conclusion to respond; or (iv) can be obtained as easily by Samsung, are already in Samsung's possession, or are publicly available.

Subject to these objections, Apple will produce relevant, non-privileged documents within its possession, custody, or control, if any, after conducting a reasonable search.

**SAMSUNG'S CERTIFICATION PURSUANT TO FED. R. CIV. P. 37(a)(1)**

Samsung hereby certifies that it has in good faith conferred with Apple in an effort to obtain the discovery described immediately above without Court action. Samsung's efforts to resolve this discovery dispute without court intervention are described in paragraphs of the declaration of Diane C. Hutnyan, submitted herewith.

DATED: January 10, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Victoria F. Maroulis

Charles K. Verhoeven

Kevin P.B. Johnson

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LTD., SAMSUNG ELECTRONICS AMERICA,  
INC., and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Samsung moves to compel the production of items within six discrete categories of highly  
4 relevant documents, by January 31, 2012:

- 5 1. all source code and other technical documents showing the operation of the  
6 allegedly infringing product features, including all those corresponding to the  
7 baseband processors incorporated in Apple's products, as required by Patent Local  
8 Rule 3-4(a);
- 9 2. all source code and other technical documents related to known prior art to the  
10 asserted patents, as required by Patent Local Rule 3-2(a);
- 11 3. all emails and documents showing Apple's analysis and consideration of Samsung  
12 and Samsung products, including those resulting from a reasonable search of  
13 documents for the party (Samsung) and products at issue, and their aliases;
- 14 4. all design history documents, including mechanical outlines ("MCOs"), prototypes,  
15 whether complete or not, physical models, sketchbooks, and other documents  
16 relevant to the validity of Apple's design patents, asserted trademark and trade  
17 dress rights.
- 18 5. all survey and marketing documents related to Apple's alleged design and utility  
19 patents, trade dress, and trademarks; and
- 20 6. all financial documents, relevant to showing the alleged value, or lack thereof, of  
21 Apple's asserted patents;

22 Samsung also seeks an order compelling Apple to provide, by January 22, 2012, dates for each of  
23 the individually noticed fact witnesses and for witnesses to testify on the topics in Samsung's First  
24 30(b)(6) Notice.

25 Apple created the urgency for these highly relevant documents by seeking expedited  
26 discovery. With only two months left for fact discovery, Samsung needs these documents and  
27 depositions immediately to invalidate Apple's patents-in-suit, show that Apple's products infringe  
28 Samsung's patents, defend against Apple's allegations, and calculate potential damages.



1 Neither this Court's order, nor the Patent Local Rules, nor even the representations that  
2 Apple makes to Samsung and the Court regarding producing documents seems to propel Apple  
3 into action. While repeatedly emphasizing to this Court the vast *quantity* of documents that Apple  
4 has supposedly produced, it has flatly refused to produce whole categories of highly relevant  
5 documents, withheld 30(b)(6) witnesses for all topics, and failed to make fact witnesses available  
6 on a timely basis.

7 Moreover, Apple has not even made a reasonable effort on the discovery Samsung has  
8 requested. For example, while spending week after week on meet and confer calls claiming to be  
9 searching for a number of specific prior art items, and then suggesting they may simply not exist,  
10 it turned out that Apple was [REDACTED]

11 [REDACTED] (Hutnyan  
12 Decl. ¶ 27; Ex. O) [REDACTED]

13 Though purporting to discuss Samsung's requests for relevant source code for weeks, Apple  
14 refused to even acknowledge it had any baseband processor source code until after the lead  
15 counsel meet-and confer on this motion. (Hutnyan Decl. Ex. B). And after spending weeks  
16 negotiating a proposal to streamline the production of categories of requested documents the  
17 parties deemed "reciprocal" (that is, calling for the same categories of requested documents),  
18 Apple completely ignored Samsung's last counterproposal and moved against it on several of the  
19 categories on a shortened deadline, while refusing to provide any of the reciprocal categories,  
20 much less by any date certain.

21 The games must end. With less than two months remaining before the close of fact  
22 discovery, Apple must be ordered to produce these categories of documents *immediately*. As  
23 Apple knows, its delays and outright refusal to produce documents prevent Samsung from  
24 conducting upcoming depositions, unearthing additional relevant discovery, preparing expert

25 \_\_\_\_\_  
26 <sup>1</sup> During the lead counsel meet and confer, on January 5, 2012, Apple admitted this library  
27 holds relevant historical documents and artifacts, had been accessed by it for recent litigation  
28 against another adversary, and has an established process for granting access to third parties upon  
Apple's request. (Hutnyan Decl. ¶ 27).



1 reports, and preparing for trial. Accordingly, Samsung asks the Court to compel Apple's  
2 production of these critical documents and things no later than January 31, 2012, and to compel  
3 Apple to provide deposition dates for all noticed depositions no later than January 22, 2012.

4 **II. LEGAL STANDARDS**

5 A party is entitled to seek through discovery "any nonprivileged matter that is relevant to  
6 any party's claim or defense." Fed. R. Civ. P. 26(b)(1). "A party may serve on any other party a  
7 request within the scope of Rule 26(b): (1) to produce . . . (A) any designated documents . . . ; or  
8 (B) any designated tangible things." Fed. R. Civ. P. 34(a).

9 A party's promises to produce do not moot a motion to compel, and an order compelling  
10 production is perfectly appropriate (and, as it is here, necessary) to back up or expand on a party's  
11 vague promises of future production. "Either information has been disclosed or it has not been  
12 disclosed. If it has not been disclosed, then, plainly, it remains to be compelled." *Lamoureux v.*  
13 *Genesis Pharmacy Services, Inc.*, 226 F.R.D. 154, 159 (D. Conn. 2004) (emphasis in original).  
14 *See also Mintz v. Dietz & Watson, Inc.*, 2008 WL 5147234 (S.D. Cal. Dec. 5, 2008) (granting  
15 motion to compel where defendant agreed to produce invoices, but full production had not been  
16 made and the late production had delayed a deposition); *Streck, Inc. v. Research & Diagnostic*  
17 *Systems, Inc.*, 250 F.R.D. 426, 435 (D. Neb. 2008) (granting motion to compel where "defendants  
18 ha[d] agreed to the production, but later refused" to comply).

19 Patent Local Rule ("P.L.R.") 3-2(b) provides for the automatic production of documents  
20 and things regarding any asserted patents, including:

21 "(b) All documents evidencing the conception, reduction to practice, design, and  
22 development of each claimed invention, which were created on or before the date of application  
23 for the patent in suit or the priority date identified pursuant to Patent L.R. 3-1(f), whichever is  
24 earlier[.]"

25 P.L.R. 3-4(a) provides for the automatic production of source code and technical  
26 documents disclosed in a defendants' invalidity contentions, stating, "With the Invalidity  
27 Contentions, the party opposing a claim of patent infringement shall produce or make available for  
28 inspection and copying: (a) Source code, specifications, schematics, flow charts, artwork,

1 formulas, or other documentation sufficient to show the operation of any aspects or elements of an  
2 Accused Instrumentality identified by the patent claimant in its Patent L.R. 3-1(c) chart.”

3 **III. ARGUMENT**

4 A. Source Code and Technical Documents Showing the Operation of Allegedly  
5 Infringing Product Features Must Be Produced

6 The Court should compel Apple to produce the requested source code and technical  
7 documents relating to the accused products. Samsung accuses Apple of infringing twelve utility  
8 patents: U.S. Pat. Nos. 6,928,604; 7,200,792; 7,447,516; 7,675,941; 7,050,410; 7,386,001;  
9 7,362,867; 7,577,460; 7,456,893; 7,069,055; 7,079,871; and 7,698,711. Apple continues to defy  
10 the Patent Local Rules by evading production of “[s]ource code, specifications, schematics, flow  
11 charts, artwork, formulas, or other documentation sufficient to show the operation” corresponding  
12 to most of the asserted patents.” L.P.R. 3-4(a).

13 For example, Apple has not produced source code relating to the baseband processors that  
14 infringe Samsung’s patents. Seven of Samsung’s asserted patents relate to wireless  
15 communications performed, at least in part, by the baseband processor within the accused Apple  
16 products. The baseband processor performs extremely low-level data processing functions and its  
17 precise operation is impossible to determine without technical documents detailing how the  
18 baseband processors operate and how they are actually integrated into the accused Apple products.  
19 This information is necessary to substantiate Samsung’s infringement allegations because some of  
20 Samsung’s asserted claims cover core technologies implemented through low-level functions such  
21 as channel coding, power scaling, packet formation, and transport stream aggregation – all of  
22 which are performed within the baseband processor itself. A mobile phone manufacturer must  
23 have this information to even integrate the hardware to a functioning device.

24 Moreover, Apple refuses to produce technical documents with any detailed description of  
25 customizations to the baseband processors made by Apple or by the processor’s manufacturer at  
26 Apple’s direction or on Apple’s behalf. These documents are critical in proving infringement of  
27 Samsung’s seven asserted wireless communications patents. In some cases, these customizations  
28 may alter Samsung’s infringement analysis. With initial expert reports due in a little over two

1 months, and the source code inspection procedure being what it is, Samsung must have access to  
2 this baseband customization information now.

3       None of the requested source code and technical documents are publicly available.  
4 Samsung's repeated requests for all relevant technical documents and source code regarding the  
5 accused features have gone largely ignored, with Apple taking the factually impossible position it  
6 has none. (Hutnyan Decl. ¶ 9). Samsung has repeatedly stated the urgency for this source code  
7 and technical documents, only to be met with Apple's boilerplate objections or denials that such  
8 source code or technical documents exist. (*Id.*). To no avail, Samsung has sought to these  
9 documents , for example, by asking Apple to admit that its mobile phones conform to the 3GPP  
10 wireless standard—which it must to properly function on mobile networks—but Apple has  
11 refused. (Hutnyan Decl. ¶¶ 5-6).

12       It is undisputed that source code and technical documents relating to the accused features  
13 are highly relevant, and that it is proper for a Court to compel production of such documents,  
14 particularly when one of the parties has sole control of them. *Keithley v. The Homestore. com,*  
15 *Inc.*, 629 F. Supp. 2d 972 , 629 (N.D. Cal. 2008); *OpenTV v. Liberate Techs.*, 219 FRD 474, 478  
16 (ND Cal. 2003). Apple has conceded the relevance of these source code and technical documents,  
17 negotiating for the parties to exchange these source code and technical documents on the basis that  
18 the parties' requests for such documents were “reciprocal.” (*See* Declaration of Melissa N. Chan  
19 in Support of Samsung's Opposition to Apple's Motion to Compel (Dkt. 501-3) ¶ 35.). Yet now,  
20 Apple only offers vague and empty promises to begin searching for the requested source code and  
21 documents by some future date.<sup>2</sup> This simply cannot continue. Samsung must have time to  
22 review these highly technical materials, consult experts, and prepare for depositions, expert  
23 reports, and trial and so they should be produced now.

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24  
25       <sup>2</sup> Apple's attempt to avoid Samsung's motion to compel on this topic – by claiming that it has  
26 been prepared and ready to make available certain subsets of the source code, of its choosing,  
27 requested by Samsung is inadequate. (Hutnyan Decl. Ex. F) Apple's offer fails to cover the  
28 balance of Samsung's request, and Apple has not offered to make the other categories of source  
code available. Apple must produce all the source code requested by Samsung without further  
delay.

1           B.       Source Code and Technical Documents Relating To Known Prior Art Must Be  
2                   Produced Must be Produced

3           Source code and technical documents relating to Apple’s patents and the products  
4 embodying the inventions claimed in those patents are relevant and should have been produced to  
5 Samsung long ago under the L.P.R. 3-2(b) and 3-4(b). Apple has asserted eight utility patents  
6 directed to software features, many of which it has asserted in other cases. Accordingly, Apple is  
7 well aware of the prior art references that were raised in those previous litigations and has easy  
8 access to the source code and technical documents relating to those prior art references. *See, e.g.,*  
9 *Elan Microelectronics, Corp. v. Apple, Inc.*, No. 09-cv-01531 (N.D. Cal.) (filed Apr. 7, 2009); *In*  
10 *re: Certain Personal Data and Mobile Comm. Devices and Related Software*, Investigation No.  
11 337-TA-710, International Trade Commission (Dec. 19, 2011); *Apple, Inc. v. Motorola, Inc.*, No.  
12 10-cv-662-bbc (W.D. Wisc.) (filed Oct. 29, 2010) (transferred to N.D. Ill).

13           Yet such materials have not been forthcoming. Samsung had to move to compel the  
14 production of such technical materials from the *Motorola* case, and Samsung keeps discovering  
15 new prior art references that Apple has “missed” in its document production.

16           For example, Apple has failed to produce source code and technical documents regarding  
17 the NeXTSTEP Operating System (“NeXT OS”). Apple has been aware for months that NeXT  
18 OS is highly relevant prior art to the ‘002 patent, as it was disclosed in Samsung’s P.L.R. 3-3  
19 Invalidity Disclosures and it was raised as relevant prior art to the ‘002 patent in another pending  
20 case. (Decl. at ¶ 12, 13, 14, 16, and Exhs. A, B ). After weeks of delay, including denying its  
21 awareness of NeXT OS, denying that Apple asserted the ‘002 patent in another case, and denying  
22 its obligation to produce the source code and technical documents, Apple finally admitted, as it  
23 must, that this prior art reference is highly relevant prior art and “agrees” to a limited production  
24 of documents regarding this reference.<sup>3</sup> Apple has no reasonable justification for withholding the  
25

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26           <sup>3</sup> (Hutnyan Decl. ¶¶ 14, 16). [REDACTED]  
27 [REDACTED]  
28 [REDACTED]


(footnote continued)

1 rest of the source code and technical documents relating to the design, development and operation  
2 of the NeXT OS, and yet it refuses to produce them.<sup>4</sup>

3 The Court should not allow Apple to continue withholding these relevant documents.  
4 Samsung needs these materials immediately to formulate its case strategy and to question  
5 witnesses in upcoming depositions. Further, reviewing this large amount of source code and  
6 technical documents will take a significant amount of time, during the course of which Samsung  
7 may identify additional topics for further discovery requests. All source code and technical  
8 documents relating to the conception and reduction to practice of the inventions in Apple's  
9 patents, and to all known prior art, should be produced no later than January 31, 2012.

10 C. All Documents Showing Apple's Analysis and Consideration of Samsung and  
11 Samsung Products Must be Produced

12 Weeks ago, Apple agreed to search for "Samsung," the names of accused products, and  
13 relevant aliases. (Hutnyan Decl. Exhs. U & V). Apple's "agreement" was offered in order to  
14 induce a reciprocal promise for Samsung to produce similar items, but it was never honored by  
15 Apple. The search for "Samsung" documents, Samsung's products, and aliases amongst Apple's  
16 files is of the utmost importance. Such documents are relevant to central issues of infringement  
17 and nonobviousness because they evidence the extent to which Apple designers, engineers, and  
18 marketing personnel were aware of and copied Samsung's products. *See Egyptian Goddess, Inc.*  
19 *v. Swisa, Inc.*, 543 F.3d 665, 677 (Fed. Cir. 2008) ("If the accused design has copied a particular  
20 feature of the claimed design that departs conspicuously from the prior art, the accused design is  
21 naturally more likely to be regarded as deceptively similar to the claimed design, and thus  
22 infringing."); *Avia Group Intern., Inc. v. LA Gear California*, 853 F.2d 1557, 1564 (Fed Cir. 1988)  
23 ("copying is additional evidence of nonobviousness."). This is exactly the same basis upon which  
24

25   
26  
27 Interestingly, at the lead counsel meet and confer, Apple admitted that it had misrepresented  
28 to another party before the ITC that it did not have any materials relating to NeXT OS, but that it  
was eventually forced to produce them. (Hutnyan Decl. ¶ 16).

1 Apple demanded Samsung search for and produce all documents using “Apple” in certain  
2 custodians' files.

3 Apple’s own witness testified to the significant relevance of these documents to  
4 infringement and nonobviousness. Apple’s witness testified that the Apple design team performed  
5 an exercise integrating the style and features of a competing phone into the design for the iPhone.  
6 (Hutnyan Decl. Exhs. S & T). These documents would indicate that Apple knew of Samsung’s  
7 features and actively copied and incorporated them into the design of the iPhone. As courts have  
8 held, evidence of such copying is highly relevant to infringement and nonobviousness.

9 Apple recognized the relevance of this search in written correspondence and twice made a  
10 commitment to search the files of its designers, engineers, marketing custodians and all relevant  
11 central files for the term “Samsung” and names of Samsung products. (Hutnyan Decl. Exhs. U &  
12 V). But more recently, Apple has reneged, confirming it will run certain searches for only some  
13 custodians, another set of searches for other custodians, and refusing to provide any date certain  
14 when these documents will be produced.<sup>5</sup> (Hutnyan Decl. ¶ 41).

15 Absent a court order compelling a search for all of these highly relevant documents, Apple  
16 will never search for and produce all of the relevant documents from all relevant custodians. New  
17 offers are coming in from Apple on the eve of motion practice but they do not come close to  
18 providing all of the materials relevant to this case. As Apple conceded in agreeing to this  
19 production earlier, all of these documents referring to “Samsung,” Samsung products, and their  
20 aliases should be searched, reviewed and produced by January 31, to allow Samsung to prepare for  
21 depositions, expert reports, and discovery.

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22  
23  
24  
25 <sup>5</sup> Apple now claims that “Samsung” has been searched and is producing or has produced  
26 documents from its design inventor documents, but not among its engineers or other employees.  
27 (Hutnyan Decl. Ex. A.) And after refusing to run “Android” anywhere, Apple now agrees to run  
28 “Android” in its design inventor documents and marketing documents only, but not “droid,” a  
common alias for “Android” for any custodian. (Hutnyan Decl. Ex. B.)

1           D.     The Court Should Compel Apple to Run Samsung's Search Terms In the Files Of  
2                     Its Designers And Produce The Result

3           Apple refuses to adequately search the documents of the inventors of the patents-in-suit,  
4 documents that are relevant to the validity of Apple's design patents and Apple's allegations that  
5 Samsung infringes its other design oriented intellectual property.

6           The parties have exchanged various search term lists but Apple refuses to include several  
7 reasonable and well planned searches for relevant custodians, without justification, and seemingly  
8 for the purpose of drawing out the negotiations. (Hutnyan Decl. Exhs. X, Y, and A). These  
9 search terms are essential to ensure the capture of documents discussing the conception, design,  
10 functionality and other aspects of Apple's design patents and asserted trademark and trade dress  
11 rights and, thus, bear directly on central issues of invalidity and infringement. As Apple  
12 acknowledged in its Motion to Compel, filed in December, these searches are critical to producing  
13 highly relevant documents. Samsung needs these documents now to determine whether inventor  
14 depositions must be reopened in light of new documents, as well as whether any further follow up  
15 discovery requests may be necessary.

16           These documents should have been produced before the design inventor depositions,  
17 nearly all of which took place in October and November. Instead, Samsung's depositions of  
18 Apple's design inventors have concluded, and Samsung must now consider the necessity of  
19 requiring additional deposition time with those inventors in light of relevant documents that are  
20 only now being produced – *or still have yet to be produced*. Apple cannot be allowed to withhold  
21 producing these highly relevant documents any longer. Apple should be compelled to run  
22 Samsung's searches and produce relevant documents immediately. (Decl. Exhs.W , X, and Z).

23           E.     All Design History Documents Relevant to the Validity of Apple's Design Patents  
24                     Must Be Produced

25           The Court should compel Apple to produce MCOs, working prototypes, and physical  
26 models that are related to Apple's own design patents and to the claimed embodiments of those  
27 inventions.



1                   1.       All Relevant MCOs, CAD Drawings, Prototypes, and Models Must be  
2                               Produced

3           Apple's own witness testified about the documents and tangibles that are at issue here.  
4   Apple's lead designer, Jonathan Ive, testified that Apple prepared MCOs and CAD drawings in  
5   designing and developing the products whose design Apple has put at issue in this litigation.  
6   (Hutnyan Decl. Ex. K at 21:4-28:25). [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9   Some of these items relate to the design patents that were at issue in Apple's motion for a  
10   preliminary injunction, but there are also similar materials related to other asserted patents that  
11   have yet to be produced that are sought here.

12           MCOs, CAD files, working prototypes, and physical models are relevant to the conception  
13   and reduction to practice of Apple's design patents, and detail the creation of Apple's products at  
14   issue in this case. These items support Samsung's invalidity and infringement defenses, showing  
15   alternate designs, choices and changes with regard to design aspects, and even design limitation  
16   due to production constraints or functionality. *See Lee v. Dayton-Hudson Corp.*, 838 F.2d 1186,  
17   1188 (Fed. Cir. 1988) ("If the patented design is primarily functional rather than ornamental, the  
18   patent is invalid.").

19           Samsung has repeatedly requested these materials pertaining to all iPhone, iPad and iPod  
20   Touch products, but Apple has engaged in delay tactics and has failed to produce them. For  
21   example, despite initially agreeing to produce MCOs in response to Samsung's December 3, 2001  
22   letter, Apple later refused to produce of the requested materials by a date certain, and now states it  
23   "anticipates" being able to *begin* producing a sub-set of the requested MCO weeks from now.  
24   (Hutnyan Decl. ¶ 20, Ex. A.) Likewise, after weeks of futile meeting and conferring, Apple  
25   suddenly expressed a willingness to produce "thousands" of unidentified models before January  
26   31, but announced on the eve of this motion that they would now be available by the end of this  
27   week. And Apple has never even agreed to produce all the tangibles relating to features, parts, and  
28   the products, or simply put, some of the most relevant material to the features at issue in this case.

1 Again, Apple mistakes the *quantity* of prototypes it purports to be producing with the *relevance* of  
2 the items that Samsung seeks, and so Apple continues to withhold the very things Mr. Ives  
3 testified about.

4 Apple likewise continues to delay production of certain, relevant physical models,  
5 including models for alternate iPhone designs, even while it has requested that Samsung provide  
6 models of its phones on an expedited basis. (Hutnyan Decl. ¶ 19). Apple explains that it would be  
7 difficult to search the offices of relevant designers for models that are not “complete”; however,  
8 Mr. Ives testified that these “small samples” were utilized in the design of Apple’s products and  
9 therefore highly relevant in this case. (Hutnyan Decl. Ex. K at 29:10-33:7). Therefore, all  
10 physical models, regardless of “completeness” or size, must be produced.

11 2. All Documents Regarding Tiger Must be Produced

12 Apple even refuses to produce documents regarding prior art that its own design inventor  
13 testified was highly relevant to the validity of its design patents. [REDACTED]

14 [REDACTED]  
15 [REDACTED] This  
16 prior art reference, which also supports a defense of inequitable conduct before the U.S. Patent  
17 Office, potentially invalidates the D’305 patent. (*Id.*). The documents sought contain relevant  
18 information regarding Apple’s own use and knowledge of the prior art. Samsung needs these  
19 documents to establish a timeline of when Apple began developing and using certain styles of  
20 icons.

21 Samsung has requested documents regarding Tiger since October 2011, only to hear that it  
22 is overly burdensome to produce such documents, or it cannot determine which “version and sub-  
23 version” Mr. Anzures testified about. (Hutnyan Decl. ¶ 24). Apple attempted to satisfy  
24 Samsung’s need for these documents with a last minute inspection of the DVD of Tiger but then  
25 claimed it had no computer that it could run on, so it could not demonstrate the relevant icons, and  
26 refused to enter into a stipulation that would have provided Samsung with the relevant facts  
27 without the burden of finding a specific computer, even though that stipulation was based wholly  
28

1 on publicly available information that Apple itself has published to consumers. (Hutnyan Decl. ¶¶  
2 25-26.)

3 Apple has already demonstrated it cannot be trusted to follow through on its  
4 representations of future productions to this Court and to Samsung, or to timely produce  
5 documents and tangibles it knows to be highly relevant to the validity of its design patents. The  
6 Court must ensure that all the relevant materials are produced and produced in a timeframe  
7 consistent with the expedited schedule in this case. Samsung continues to be prejudiced without  
8 access to invalidating prior art documents. These documents are necessary to prepare for and  
9 conduct depositions, and the Court must compel Apple to produce, by January 31, 2012, all  
10 requested documents relating to the Tiger prior art reference.

11 F. Survey and Marketing Documents Related to Apple's Alleged Design and Utility  
12 Patents, Trade dress, and Trademarks Should be Produced

13 The Court should compel Apple to produce documents necessary to defend against  
14 Apple's allegations that Samsung's products infringe Apple's alleged design patents, trade dress,  
15 and trademarks. Samsung has requested that Apple produce documents responsive to Samsung's  
16 requests directed at the market for Apple's products, including consumer surveys, focus groups  
17 and other marketing-related documents. (Hutnyan Decl. ¶ 29; Exhs. P, Q, & R).

18 These documents, described by Apple's own worldwide director of marketing, include  
19 consumer surveys, advertising strategies, and demographic studies regarding purchasers of the  
20 accused products. Besides being relevant to damages, these documents are also relevant to  
21 establishing lack of consumer confusion with respect to Apple's asserted trademark claims, lack of  
22 distinctiveness and famousness of Apple's asserted trade dresses and invalidity, including due to  
23 functionality, of Apple's asserted design patents. Moreover, Samsung needs these marketing  
24 materials to question witnesses in upcoming depositions on issues pertaining to product features  
25 and other market information.

26 Apple does not question the significant relevancy of these documents. Nor can it, given  
27 that it moved to compel Samsung to produce the same category of documents in December.  
28 Despite acknowledging the significant relevance, Apple has failed to produce such documents,

1 claiming that Samsung has never raised the issue or requested survey or marketing documents,  
2 despite Samsung's several document requests seeking these materials. (*See* Samsung's Requests  
3 for Production Nos. 29, 44, 130, 147, 148, 162, 163, 165, 169, 170, 177, 178, 190, 191, and 249.)  
4 Samsung needs these documents now so that it will have the time to analyze these complex  
5 documents in advance of depositions and trial. Therefore the Court should compel Apple to  
6 produce these documents by January 31, 2012.

7 G. The Requested Categories of Financial Documents Must Be Produced

8 The Court should compel Apple to produce the financial documents Samsung has  
9 requested related to the patents-in-suit and products at issue in this case. (Hutnyan Decl. Ex.  
10 R). The relevance of these documents to damages calculations cannot be denied. *See, e.g., Elan*  
11 *Microelectronics Corp. v. Apple, Inc.*, 2011 WL 4048378 (N.D. Cal. Sept. 9, 2011) (compelling  
12 Apple to produce improperly held licenses and financial documents).

13 These documents also include Apple's business plans and strategies with regard to  
14 developing and marketing its products. Apple does not dispute that these documents are highly  
15 relevant, and has propounded similar (albeit broader) document requests to Samsung.

16 On the eve of this motion, Apple has finally "agreed" to produce a small subset of financial  
17 documents, but refuses, without reasonable justification, to produce all relevant financial  
18 documents, including business and strategic plans and projections. (Hutnyan Decl. ¶ 36).  
19 Samsung can no longer wait for Apple to decide if and when it would be appropriate to produce  
20 these clearly relevant financial documents and Apple should be compelled to produce all of this  
21 material by January 31, 2012.

22 H. Apple Must Be Compelled To Produce Dates for All 30(b)(6) Witnesses

23 Apple refuses to give Samsung a single witness for its Rule 30(b)(6) topics. Samsung  
24 served Apple with its First 30(b)(6) Notice on December 14, 2011, and attempted to schedule  
25 depositions regarding the topics listed in its Notice shortly thereafter. (Hutnyan Decl. ¶ 46). The  
26 notice contained, detailed and succinct topics designed to assist Apple in preparing its witnesses  
27 on the many issues relevant to the parties' claims and defenses in this case. But rather than  
28 negotiating about the scope of the topics, and providing dates for at least the topics that Samsung

1 prioritized for Apple in a January 3, 2012 letter, Apple has refused to provide any testimony at all  
2 on any topic and has demanded that Samsung “withdraw” the notice and start over. (Hutnyan  
3 Decl. ¶¶ 47-51; Ex. CC). Importantly, in addition to asserting a number of boilerplate objections  
4 about the topics being “oppressive” and “harassing,” Apple has now conditioned its production of  
5 witnesses on Samsung’s promise to provide witnesses who would give reciprocal testimony on  
6 vague “similar” issues. (Hutnyan Decl. Ex. AA). These objections are frivolous.

7 First, Apple has failed to identify even a single topic in Samsung’s Notice that is irrelevant,  
8 or any specific request that is overbroad, irrelevant, or harassing.

9 Second, the Federal Rules do not allow parties to condition their production on what their  
10 opponent will do. As Fed. R. Civ. P. 26(d)(2)(B) provides, “discovery by one party does not  
11 require any other party to delay its discovery.” *Accord* Schwarzer et al., *Cal. Prac. Guide: Fed.*  
12 *Civ. Pro. Before Trial* ¶ 11:1390 (Rutter) (“The fact one party is conducting discovery (by  
13 deposition or otherwise) does *not* operate to delay another party’s right to discovery.”). Courts  
14 likewise have rejected claims that alleged deficiencies in another party’s discovery can support a  
15 refusal to be deposed *See, e.g., George C. Frey Ready-Mixed Concrete, Inc. v. Pine Hill Concrete*  
16 *Mix Corp.*, 554 F.2d 551, 556 at n.5 (2d Cir. 1977) (stating that parties’ respective rights to  
17 discovery are “concurrent” with one another); *Struthers Scientific & Int’l Corp. v. Gen. Foods*  
18 *Corp.*, 290 F. Supp. 122, 128 (S.D. Tex. 1968) (“the failure to answer plaintiff’s interrogatories  
19 provides no grounds for vacating or staying defendant’s notice of taking of depositions.”)

20 Third, the parties each have their own time limit for depositions on issues relevant to the  
21 case. Samsung has the right to use its time as it sees fit and Apple has made its own choices.  
22 Apple does not get to add to its time by demanding “reciprocal” discovery on top of what it is  
23 entitled to under the Court’s guidelines.

24 There are two months left in fact discovery and Samsung must have the opportunity to  
25 depose 30(b)(6) witnesses now. The Court should compel Apple to produce (prompt) deposition  
26 dates for all of Samsung’s 30(b)(6) witnesses by January 22.

1 I. Apple Must be Compelled to Make Noticed Fact Witnesses Available

2 Apple also refuses to produce any of Samsung's individually noticed witnesses, or to  
3 provide more time with Jonathan Ive, Apple's lead designer. Since completing inventor  
4 depositions, the balance of which were completed in October 2011, Apple has offered dates for  
5 none of the 49 new individually noticed depositions, nor has Apple served objections or been  
6 willing to meet and confer on them beyond stating that it will only provide dates for these  
7 depositions if Samsung will provide dates for every witness Apple noticed, no matter how  
8 objectionable those depositions might be. (Hutnyan Decl. ¶ 52). Meanwhile, Samsung has  
9 offered Apple dates for nine of 37 notices of deposition, and continues to propose dates. (Decl. at  
10 ¶ 53).

11 Apple cannot earnestly dispute the importance of these witnesses—including engineers,  
12 employees in the marketing department, and design specialists. (Hutnyan Decl. ¶ 52.) They have  
13 significant roles directly related to the products at issue in this case and many were identified by  
14 other Apple witnesses as possessing highly relevant information. (Id.) Further, based on  
15 experience with Apple witnesses in this case, as described above, Samsung anticipates these  
16 depositions will lead to discovering more highly relevant documents that Apple has never  
17 produced.

18 Apple also refuses to provide additional deposition time with [REDACTED] Apple asserts that  
19 [REDACTED] is the only designer with any significant, substantive knowledge regarding the design of  
20 Apple's products at issue. Yet Apple refuses to produce [REDACTED] to continue his deposition  
21 testimony. Additionally, Samsung was forced to depose [REDACTED] without crucial evidence  
22 regarding the validity of alleged invention and the design of the products at issue—evidence that  
23 Apple has just recently begun producing (with no date certain of if, or when, such production will  
24 be complete). Apple does not raise a substantive complaint, but merely states that Mr. Ive is no  
25 longer available for deposition. (Hutnyan Decl. Ex. A).

26 This is contrary to significant weight of the law, which favors liberally granting sufficient  
27 time to “fairly examine a deponent” that is “key witness,” or “best source of information regarding  
28 relevant issues.” *See Ryan v. Paychex, Inc.*, 2009 WL 2883053, at \*1 (D. Conn. Sept. 1, 2009)

1 (“Rule 30 of the Federal Rules of Civil Procedure governs the conduct of parties, deponents, and  
2 attorneys at depositions. Pursuant to that rule, a Court must allow additional time if it is needed to  
3 fairly examine a deponent . . . .”) (emphasis added); *JSR Micro, Inc. v. QBE Ins. Corp.*, 2010 WL  
4 1338152, at \*6 (N.D. Cal. Apr. 5, 2010) (granting plaintiff additional time for deposition where  
5 deponent was a “key witness”); *Rahman v. The Smith & Wollensky Restaurant Group*, 2009 WL  
6 72441, at \*4 (S.D.N.Y. Jan. 7, 2009) (granting additional time for deposition because witness was  
7 “best source of information” regarding relevant issues); *Securities and Exchange Comm. v. Aqua*  
8 *Vie Beverage Corp.*, 2006 WL 2457525, at \*4 (D. Idaho Aug. 23, 2006) (witness’ role as  
9 “important player” in litigation justified additional time for his deposition).

10 Apple’s continued failure to even discuss a single deposition date demonstrates it will not  
11 do so on its own accord. The Court should compel Apple to produce (prompt) deposition dates for  
12 all of Samsung’s individually noticed depositions by January 22, produce Mr. Ive to allow  
13 Samsung to depose him.

#### 14 **IV. CONCLUSION**

15 Samsung can no longer wait for Apple to produce these highly relevant documents, things,  
16 and testimony. Apple’s strategy to delay producing documents, deny their existence despite  
17 deposition testimony to the contrary, or negotiate toward a compromise Apple does not intend to  
18 honor, continues to waste time and prejudice Samsung. Apple clearly intends to withhold  
19 deposition witnesses and key documents from Samsung as long as it can. Apple’s mantra, that it  
20 has produced large quantities of materials is a red herring. Whatever else has been produced does  
21 not make up for the many categories of highly relevant documents Apple is known to be  
22 withholding. The documents and tangibles described above are needed immediately in order for  
23 Samsung to prepare for depositions, prepare expert reports, and prepare for trial. They go directly  
24 to the validity of Apple’s patents, Apple’s infringement of Samsung patents, and damages.

25 For the foregoing reasons, the Court should GRANT Samsung’s Motion to Compel. In  
26 particular, the Court should compel Apple to produce, by January 31, 2012:

- 27 1. all source code and other technical documents showing the operation of the
- 28 allegedly infringing product features, including all those corresponding to the



baseband processors incorporated in Apple's products, as required by Patent Local Rule 3-4(a);

2. all source code and other technical documents related to known prior art to the asserted patents, as required by Patent Local Rule 3-2(a);
3. all emails and documents showing Apple's analysis and consideration of Samsung and Samsung products, including those resulting from a reasonable search of documents for the party (Samsung) and products at issue, and their aliases;
4. all design history documents, including mechanical outlines ("MCOs"), prototypes, whether complete or not, physical models, sketchbooks, and other documents relevant to the validity of Apple's design patents asserted trademark and trade dress rights.
5. all survey and marketing documents related to Apple's alleged design and utility patents, trade dress, and trademarks; and
6. all financial documents, relevant to showing the alleged value, or lack thereof, of Apple's asserted patents.

The Court should also compel Apple to provide prompt deposition dates for all properly noticed fact witnesses, including [REDACTED] as well as for all of Samsung's 30(b)(6) deposition topics, by January 22, 2012.

DATED: January 10, 2011

Respectfully submitted,

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2. Whether Samsung is entitled to Apple's substantially complete production by January 31, 2012, of certain categories of source code and other technical documents regarding prior art known to Apple;

4. Whether Samsung is entitled to Apple's substantially complete production by January 31, 2012, of certain categories of relevant survey, marketing, and financial documents;

5. Whether Samsung is entitled to Apple's substantially complete production by January 31, 2012, of certain categories of relevant financial documents;

6. Whether Samsung is entitled to Apple’s substantially complete production by January 31, 2012, of certain categories of design history documents, including mechanical outlines (“MCOs”), working prototypes, physical models, sketchbooks, and other documents relevant to Apple’s design patents and asserted trademark and trade dress rights; and

7. Whether Samsung is entitled to Apple's production of fact and 30(b)(6) witnesses, including a reasonable opportunity to depose a witness Apple has characterized as a key witness.