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HAROLD J. MCELHINNY (CA SBN 66781)
hmcclhinny@mofo.com
MICHAEL A. JACOBS (CA SBN 111664)
mjacobs@mofo.com
JENNIFER LEE TAYLOR (CA SBN 161368)
jtaylor@mofo.com
ALISON M. TUCHER (CA SBN 171363)
atucher@mofo.com
RICHARD S.J. HUNG (CA SBN 197425)
rhung@mofo.com
JASON R. BARTLETT (CA SBN 214530)
jasonbartlett@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-7000
Facsimile: (415) 268-7522

WILLIAM F. LEE
william.lee@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
mark.selwyn@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
950 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 858-6000
Facsimile: (650) 858-6100

Attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a
Korean corporation; SAMSUNG ELECTRONICS
AMERICA, INC., a New York corporation; and
SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC, a Delaware limited liability
company,

Defendants.

Case No. 11-cv-01846-LHK

**[PROPOSED] ORDER GRANTING
APPLE'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS
AND THINGS**

1 Plaintiff Apple Inc. (“Apple”) has moved pursuant to Federal Rule of Civil Procedure 37
2 and Patent Local Rule 3-4(a) for an order compelling Defendants Samsung Electronics Co., Ltd,
3 Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC
4 (collectively, “Samsung”) to complete, by the dates specified below, its production of certain
5 identified documents and things. Having considered the arguments of the parties and the papers
6 submitted, and GOOD CAUSE HAVING BEEN SHOWN, the Court hereby GRANTS Apple’s
7 Motion to Compel Production of Documents and Things as follows:

8 **I. Technical Documents Relevant to Utility Patent Infringement.**

9 IT IS ORDERED that by no later than January 23, 2012, Samsung shall complete its
10 production of the technical documents identified in subsections A through R below.

11 A. Documents sufficient to show, for each Product at Issue, which versions of the
12 operating system (including but not limited to the Android operating system or TouchWiz
13 overlay) included the accused functionality, and the dates during which each version of the
14 operating system was used.¹

15 B. Documents sufficient to show, for each Product at Issue, which updates to the
16 operating system (including but not limited to the Android operating system or TouchWiz
17 overlay) included the accused functionality, and the dates when such updates were made
18 available.

19 C. Documents sufficient to show, for each Product at Issue, which features, operations,
20 characteristics of, or changes made to each version of the operating system (including, but not
21 limited to, the Android operating system or TouchWiz overlay) included the accused
22 functionality, including technical specifications as well as instructions relating to deployment,
23 installation, maintenance, and upgrade procedures.

24 D. Documents sufficient to show, for each Product at Issue, which versions of any
25 software, firmware, program(s) library(ies) or other system used to control the touchscreens

26 ¹ For purposes of this Order, Samsung “Products at Issue” includes all Galaxy phone and
27 tablet products and all products identified in Apple’s Amended Complaint. Apple “Products at
28 Issue” includes all iPhone, iPod Touch, and iPad products.

1 (including at least the touch sensor panels) included the accused functionality, and the dates
2 during which each such version was in use.

3 E. Documents sufficient to show, for each Product at Issue, which updates to any
4 software, firmware, program(s), library(ies) or other system used to control the touch screens
5 (including at least the touch sensor panels) included the accused functionality, and the dates when
6 such updates were made available.

7 F. Documents sufficient to show, for each Product at Issue, which features, operations,
8 characteristics of, or changes made to each version of the any software, firmware, program(s),
9 library(ies) or other system used to control the touch screens (including the display and touch
10 sensor panels) included the accused functionality, including technical specifications as well as
11 instructions relating to deployment, installation, maintenance, and upgrade procedures.

12 G. Documents sufficient to show, for each Product at Issue, which versions of each
13 Samsung application installed in the Products at Issue included the accused functionality, and the
14 dates during which each such version was in use.

15 H. Documents sufficient to show, for each Product at Issue, which updates to each
16 Samsung application included the accused functionality, and the dates when such updates were
17 made available.

18 I. Documents sufficient to show, for each Product at Issue, which features, operations,
19 characteristics of, or changes made to each version of any Samsung application of the Products at
20 Issue included the accused functionality, including, but not limited to, those relating to
21 deployment, installation, maintenance, and upgrade procedures.

22 J. Documents sufficient to show arrangement and specification of traces, conductive
23 lines, conductive layers, glass, dielectrics, substrates, adhesives, and other elements used to
24 construct the touch screens (including the display and touch sensor panels) of the Products at
25 Issue.

26 K. Documents sufficient to show the design, manufacture, specification and operation of
27 any monitoring circuitry, integrated circuit, chip, controller or module used to operate the touch
28 screens (including the display and touch sensor panels) of the Products at Issue.

1 L. All data sheets concerning the touch screens (including the display and touch sensor
2 panels) on the Products at Issue or any monitoring circuitry, integrated circuit, chip, controller or
3 module used to operate said touch screens.

4 M. Documents sufficient to show and to understand design, specifications, and
5 manufacturing tolerances for the touch screens, touch sensor controllers, and touch screen
6 components in the Samsung Products at Issue, including but not limited to specifications,
7 schematics, flow charts, formulas, or other documentation showing the design and operation of
8 the touch screens, touch sensor controllers, and touch screen components or of other accused
9 features.

10 N. All requests for quotations relating to the touchscreens, touchscreen controllers, and
11 touch screen components in each Samsung Product at Issue.

12 O. All qualification documentation for the touchscreens, touchscreen controllers, and
13 touch screen components in each Samsung Product at Issue, including internal qualification
14 documentation and vendor qualification documentation, specifications used to qualify both first-
15 and third-party supplied parts and components, and quality control criteria used for
16 manufacturing.

17 P. All Bills of Materials and design drawings relating to the Samsung Products at Issue
18 provided to or received from vendors or suppliers.

19 Q. All functional testing results and testing criteria relating to the touch screens, touch
20 sensor controllers, and touch screen components in the Samsung Products at Issue, including
21 documents pertaining to prototypes and pre-production touch screens, touch sensor controllers,
22 and touch screen components.

23 R. All testing data related to the shielding of traces of conductive material in the Samsung
24 Products at Issue.

25 *** **

1 **II. Documents Related to Design-Around Efforts**

2 IT IS FURTHER ORDERED that **by no later than January 23, 2012**, Samsung shall
3 complete its production to Apple of the documents relating to design-around efforts identified in
4 subsections A through E below.

5 A. Documents sufficient to identify and show in detail each design around, allegedly non-
6 infringing alternative manufacturing process, and/or alternative technology or method that can be
7 used as an alternative to the patented technology of each of the Utility Patents at Issue.

8 B. All Documents concerning each design around, and/or allegedly non-infringing
9 alternative design that can be used as an alternative to the Design Patents at Issue.

10 C. All Documents relating to each change Samsung made, is now making, or will make to
11 the Products at Issue in response to Apple's allegations in this lawsuit.

12 D. All Documents relating to Samsung's analyses, actions, plans or attempts to exercise
13 due care to avoid infringing the Patents at Issue.

14 E. All Communications with Google or any other third party regarding design arounds for
15 the Patents at Issue.

16 *** **

17 **III. Documents Relevant to Design Patent, Trademark, and Trade Dress Infringement.**

18 IT IS FURTHER ORDERED that **by no later than January 23, 2012**, Samsung shall
19 complete its production to Apple of the documents relating to infringement of Apple's design
20 patents, trademark, and trade dress identified in subsections A through O below.

21 A. E-mails and documents from designers, developers, or anyone else responsible for or
22 involved in the design, development or marketing of Samsung's Products at Issue (including but
23 not limited to individuals responsible for or involved in consumer surveys, R&D, management,
24 and product planning), and counsel (if not privileged) discussing actual consumer confusion or
25 the possibility of consumer confusion between the parties' Products at Issue or the source,
26 sponsorship, or affiliation of the parties' Products at Issue.

27 B. Trademark, trade dress, and design patent search reports relating to any element of
28 Apple's asserted trade dress or asserted trademarks, including prior art searches.

1 C. Documents discussing or assessing the design of Apple's Products at Issue, including
2 the distinctiveness or lack of distinctiveness thereof or the similarity of design between any of the
3 parties' products, from the files of designers, developers, anyone else responsible for or involved
4 in the design, development or marketing of Samsung's Products at Issue (including but not
5 limited individuals responsible for or involved in consumer surveys, R&D, management, and
6 product planning), and counsel (if not privileged).

7 D. For inspection, all physical samples of Apple's Products at Issue in Samsung's
8 possession (excluding products purchased for litigation or products personally owned by its
9 employees).

10 E. Documents sufficient to show the identity and title of individuals who developed the
11 external hardware design and the GUI design for each of Samsung's Products at Issue (including
12 the design of the icons used in the GUI).

13 F. E-mails and documents from designers, developers, engineers, and others (including
14 but not limited to CAD drawings, sketchbooks/notebooks, models/mockups, and Adobe
15 Illustrator or other computer files) relating to the design and development of all GUI designs for
16 each of Samsung's Products at Issue, including but not limited to the design and development of
17 TouchWiz, the icons and icon arrangement(s) used in each Samsung Product at Issue, and all
18 alternative GUI designs considered or used by Samsung.

19 G. E-mails and documents from designers, developers, engineers, and others relating to
20 the feasibility of all GUI designs considered (including ease of manufacturing, cost savings,
21 enhanced usability and technological challenges).

22 H. E-mails and documents from designers, developers, engineers and others relating to
23 the design and development of all external hardware designs—including design alternatives and
24 redesigns and the feasibility (including ease of manufacturing, cost savings, enhanced usability
25 and technological challenges) of the designs considered—for all smartphone and tablet computer
26 products offered for sale by Samsung.

27 I. E-mails and documents from designers, developers, engineers and others relating to the
28 design and development of the earphone or speaker slot design for all mobile phone products

1 offered for sale by Samsung—including design alternatives and redesigns and the feasibility
2 (including ease of manufacturing, cost savings, enhanced usability and technological challenges)
3 of the designs considered.

4 J. Designer meeting minutes, notes of design meetings, specifications or requirements
5 communicated to the designers, project management reports, and reports to executives relating to
6 the external hardware design or the GUI for all smartphones or tablet computers offered for sale
7 by Samsung.

8 K. Three samples of each Samsung Product at Issue, including user and service manuals
9 and all other end user documentation relating to the intended use or operation of the products at
10 issue.

11 L. Documents sufficient to show all model numbers, code names, or other internal
12 designations used to refer to each of Samsung's Products at Issue.

13 M. To the extent not already produced under the Court's December 22, 2011, Order (Dkt.
14 537), all Samsung sketchbooks (or similar hand drawings, however created, stored, or archived)
15 created on or after January 1, 2000, that depict designs for any Samsung mobile phone product,
16 tablet product, or touchscreen digital media player, regardless of where sold, whether for a final
17 design or an alternative design that was not commercially released.

18 N. To the extent not already produced under the Court's December 22, 2011, Order, all
19 CAD drawings (or other schematics that Samsung uses to design its products) created on or after
20 January 1, 2000, that depict designs for any Samsung mobile phone product, tablet product, or
21 touchscreen digital media player, regardless of where sold, whether for a final design or an
22 alternative design that was not commercially released.

23 O. To the extent not already produced under the Court's December 22, 2011, Order, All
24 physical models created on or after January 1, 2000, that depict designs for any Samsung mobile
25 phone product, tablet product, or touchscreen digital media player, regardless of where sold,
26 whether for a final design or an alternative design that was not commercially released.

27 *** **

1 **IV. Marketing, Market Research, and Advertising Documents.**

2 IT IS FURTHER ORDERED that **by no later than January 23, 2012**, Samsung shall
3 complete its production to Apple of the marketing, market research, and advertising documents
4 identified in subsections A through K below.

5 A. All U.S. and global marketing and advertising strategy documents, marketing
6 requirements documents, market analyses (including actual or projected market demand), market
7 share analyses, competitor analyses, consumer surveys, and focus group studies relating to the
8 Apple or Samsung Products at Issue, including but not limited to those that mention Apple, iPod,
9 iPhone, iPad or any other nicknames or designations used by Samsung to indicate Apple or any of
10 its products.

11 B. Documents evidencing or referencing U.S. or global media plans for any of Samsung's
12 Products at Issue.

13 C. A copy of each U.S. advertisement and any drafts of each U.S. advertisement for any
14 of Samsung's Products at Issue, including but not limited to print, television, billboard, radio, on-
15 line, and airline advertisements, and documents sufficient to determine where and when each such
16 advertisement appeared.

17 D. Copies of any advertisements, wherever run, that mention or target Apple or any of its
18 products, including but not limited to advertisements that are meant to evoke Apple or any of its
19 products and/or to compete with Apple or any of its products.

20 E. Documents referencing or relating to the number of times an online advertisement for
21 any of Samsung's Products at Issue has been "clicked on" by a user.

22 F. Documents sufficient to identify all markets and retail outlets where Samsung's
23 Products at Issue are or will be sold.

24 G. Documents describing how Samsung's Products at Issue are to be marketed or
25 presented in retail outlets or by carriers, including but not limited to scripts or sales points to be
26 used by salespeople.

27 H. Documents referencing or relating to any incentives that Samsung offers to any retail
28 outlet or carrier in connection with the sale of any of Samsung's Products at Issue.

1 I. Documents sufficient to identify all markets and media outlets where Samsung's
2 Products at Issue are or will be advertised.

3 J. Documents sufficient to show per-month advertising and marketing spending in the
4 U.S. regarding the Products at Issue.

5 K. Documents sufficient to identify the demographics of likely or targeted customers for
6 each of Samsung's Products at Issue.

7 **V. Financial Information Relevant to Damages.**

8 IT IS FURTHER ORDERED that **by no later than January 23, 2012**, Samsung shall
9 complete its production to Apple of the sales and other financial documents identified in
10 subsections A through H below. All figures provided should tie to Samsung's general ledger,
11 should include any carrier subsidies, rebates or payments, and should be provided in U.S. dollars
12 (including any currency conversions used). To the extent that Samsung contends that any form of
13 damages will include less than a full quarter for any product, Samsung must provide these figures
14 on a monthly basis for that product and the specific quarter (or monthly for all products and
15 periods). All figures should be provided from the date the product was first available in the U.S.
16 or worldwide.

17 A. Documents evidencing Samsung's U.S. and worldwide revenue, unit sales and selling
18 price for the accused products (smartphones and tablets), including:

19 1. Samsung's U.S. and worldwide revenues for the accused products (1) per
20 smartphone or tablet (2) per carrier (3) per quarter.

21 2. Samsung's U.S. and worldwide unit sales for the accused products (1) per
22 smartphone or tablet (2) per carrier (3) per quarter.

23 3. Samsung's U.S. and worldwide average selling price for the accused products
24 (1) per smartphone or tablet (2) per carrier (3) per quarter.

25 B. Documents sufficient to show the date when each accused product was introduced into
26 the U.S. market.

27 C. Reports showing gross profit and Samsung's cost of goods sold:
28

1 1. For each accused product, costed bills of materials and financial reports
2 provided to U.S. or corporate management reflecting Samsung's calculation of its gross margin
3 for the accused products from June 2009 to the present.

4 2. To the extent the reports are not prepared on a product-by-product basis, reports
5 reflecting gross margins or gross profit consolidated for the accused products, for tablets and for
6 smartphones or for Galaxy S and Galaxy SII line of phones as reflected on a quarterly or monthly
7 basis.

8 3. Based on standard accounting and financial conventions, these reports should
9 show both standard costs for the components that make up the phones and allocations of other
10 expenses (such as freight, variances, and manufacturing overhead) to calculate a consolidated cost
11 of goods sold.

12 D. Reports reflecting operating costs and profitability with respect to smartphones:

13 1. Consolidated reports provided to U.S. and corporate management reflecting any
14 expenses not included in costs of goods sold that Samsung incurs or allocates to U.S. smartphone
15 or tablet products, including any research and development expenses, sales and marketing
16 expenses, and general and administrative expenses.

17 2. Consolidated reports that reflect how such expenses for the accused products
18 compare to U.S. expenses for mobile phones more generally and/or to worldwide expenses.

19 3. Consolidated reports on operating profit for any of the accused phones, for
20 smartphones, and for mobile phones more broadly reflecting the foregoing expenses.

21 E. Audited or unaudited financial reports for each entity named as a defendant in this case
22 and for each Samsung entity that sells any of the accused products, audited (or, if audited are
23 unavailable, unaudited) financial reports (including at a minimum an income statement, balance
24 sheet, cash flow statement and all associated notes) for each quarter or fiscal year ending on or
25 after March 31, 2009.

26 F. Documents relating to any financial valuation of the intellectual property in suit. The
27 foregoing should include any reports on in-process research and development calculations that
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1 include technology related to any accused products, any valuation used for balance sheet
2 valuations, amortization, or a write-off of intangible assets.

3 G. Documents sufficient to show relevant expense for research and development and to
4 design around any patent, including:

5 1. Any consolidated reports on the expense Samsung incurred to develop any of
6 the accused products.

7 2. Any reports or financial information that reflect the actual or projected expense
8 to design around any patent.

9 H. Any quarterly, annual or multi-year business plans prepared for the accused products
10 or the divisions of Samsung that sell the accused products.

11 **IT IS SO ORDERED.**

12 Dated:

By: _____

Honorable Paul S. Grewal, U.S.M.J.