

1 HAROLD J. MCELHINNY (CA SBN 66781)  
 hmcclhinny@mofo.com  
 2 MICHAEL A. JACOBS (CA SBN 111664)  
 mjacobs@mofo.com  
 3 JENNIFER LEE TAYLOR (CA SBN 161368)  
 jtaylor@mofo.com  
 4 ALISON M. TUCHER (CA SBN 171363)  
 atucher@mofo.com  
 5 RICHARD S.J. HUNG (CA SBN 197425)  
 rhung@mofo.com  
 6 JASON R. BARTLETT (CA SBN 214530)  
 jasonbartlett@mofo.com  
 7 MORRISON & FOERSTER LLP  
 425 Market Street  
 8 San Francisco, California 94105-2482  
 Telephone: (415) 268-7000  
 9 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

11 Attorneys for Plaintiff and  
 12 Counterclaim-Defendant APPLE INC.

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN JOSE DIVISION

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

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

**APPLE'S OPPOSITION TO  
 SAMSUNG'S MOTION FOR  
 CLARIFICATION REGARDING  
 THE COURT'S DECEMBER 22,  
 2011 ORDER**

Date: January 19, 2012  
 Time: 10:00 a.m.  
 Place: Courtroom 5, 4th Floor  
 Judge: Hon. Paul S. Grewal

1 **I. INTRODUCTION**

2 There is nothing in the Court’s December 22, 2011 Order that requires clarification.  
3 Samsung identified four categories of documents that it wished to show its expert, Itay Sherman,  
4 and those four categories were the subject of the Court’s Order. Samsung cannot now complain  
5 that it needs the Court’s assistance to understand the boundaries of the categories set forth in  
6 Samsung’s own papers. Moreover, there is no ambiguity regarding the additional categories of  
7 confidential documents that it wishes to provide to Mr. Sherman—Samsung admits that these  
8 additional categories do not fall within the scope of relief granted by the Sherman Order.

9 Samsung is really seeking reconsideration of the Sherman Order. It fails to comply with  
10 the requirements for filing such a motion, however. In addition, the categories of documents that  
11 Samsung seeks to show Mr. Sherman raise exactly the same risk of competitive harm that led the  
12 Court to deny a portion of the relief sought in the previous motion.

13 For these reasons, the Court should deny Samsung’s motion.

14 **II. ARGUMENT**

15 **A. Nothing in the December 22 Order Requires Clarification.**

16 There is nothing remotely ambiguous in the Court’s December 22 Order (“Sherman  
17 Order”). That Order granted Samsung’s motion with respect to 3 specific categories of materials  
18 (CAD files, design patent inventor sketchbooks, and design inventor deposition transcripts) and  
19 denied the motion with respect to a fourth category (presentations and other internal documents).  
20 (Dkt. No. 535.) The four document categories that were the subject of the Sherman Order were  
21 the same four document categories identified in Samsung’s motion. (Dkt. No. 482 at 4-5.) As the  
22 author of those categories, it is preposterous for Samsung to suggest that they are somehow  
23 unclear and require the Court to interpret them for Samsung.

24 Nor is there any ambiguity as to whether the additional categories listed in the current  
25 motion fall within the categories approved by the Court in the Sherman Order. Indeed, Samsung  
26 admits that they do not. (Samsung Mot. at 2 (Sherman Order “did not address these [additional]  
27 categories”).) Since Samsung does not and cannot identify anything in the Sherman Order that  
28 requires clarification, its motion should be denied.

1           **B. Samsung Seeks Reconsideration of the Court’s December 22 Order, but**  
2           **Makes No Attempt to Comply With the Requirements of a Motion for**  
3           **Reconsideration.**

4           Samsung asserts that its previous motion sought a broader range of relief than the  
5 categories that were the subject of the Sherman Order. (Samsung Mot. at 4 (stating that the  
6 previous motion sought permission to show Mr. Sherman “any documents, depositions, and other  
7 materials related to Apple’s designs and design patents, excluding any documents discussing  
8 Apple’s multi-touch technology”).) In essence, Samsung argues that the Court erred in limiting  
9 its analysis to the categories discussed in the Sherman Order, and now asks the Court to allow Mr.  
10 Sherman access to additional categories which (according to Samsung) were also sought by its  
11 previous motion. This is a motion for reconsideration, and as such is governed by the  
12 requirements set forth under Local Rule 7-9.

13           Samsung fails to comply with those requirements. First, Samsung failed to seek and  
14 obtain leave of the Court for filing a motion for reconsideration. *See* Civ. L.R. 7-9(a) (“No party  
15 may notice a motion for reconsideration without first obtaining leave of Court to file the  
16 motion”).

17           Second, Samsung does not even attempt to make the showing required under Local Rule  
18 7-9(b), which requires a party seeking reconsideration to show: (a) that a material difference in  
19 fact or law exists from that which was presented to the Court, and that the party did not know  
20 such law or fact at the time of the previous motion despite reasonable diligence; or (b) new  
21 material facts or a change of law after the order; or (c) a manifest failure by the Court to consider  
22 material facts or dispositive legal arguments which were presented to the Court. Civ. L.R. 7-9(b).  
23 Samsung points to no new facts or law and does not suggest that the arguments and facts  
24 presented in its current motion were previously presented to the Court. Samsung only argues that  
25 the Court misread the scope of relief sought by the previous motion. This is not a ground for  
26 reconsideration under the Northern District Local Rules. On this basis alone, the Court should  
27 deny Samsung’s motion.  
28

1           **C.     The Relief Sought by the Motion Does Not Comport With the Court’s**  
2           **Reasoning in the Sherman Order.**

3           To the extent that the Court considers the additional document categories sought by  
4 Samsung’s motion, it should deny Samsung’s request to allow Mr. Sherman access to them. Mr.  
5 Sherman is the CEO of a multi-touch technology company that directly competes with Apple. In  
6 its previous motion, Samsung asserted that Mr. Sherman’s review of Apple’s documents would  
7 not pose a risk of competitive harm to Apple because Samsung would show him documents  
8 relating only to design, not technology. At the hearing on the motion, the Court responded to that  
9 point by observing that, according to one of Samsung’s own witnesses, the line between design  
10 and technology is “pretty blurry when you get down to specific instances of whether someone  
11 should look at the document or not.” (Mazza Decl. Ex. A at 54:11-15.)

12           Consistent with this point, the Court held that Mr. Sherman could review only those  
13 “design-related materials that bear insufficient risk of revealing utility-side details that would  
14 benefit Sherman’s work with DoubleTouch.” (Dkt. No. 535 at 3.) The category of “presentations  
15 and other internal documents showing that design features are functional” did not satisfy this  
16 standard because the category was “ambiguous” and “suggests material of a nature that is not  
17 strictly design-oriented and that may contain input from a broader range of Apple’s people and  
18 processes.” (*Id.* at 4.)

19           That reasoning applies to each of the categories identified in Samsung’s motion:

20           Internal design team emails that relate to phone, music player, and table designs. This  
21 category is no less ambiguous than the “presentations and other internal documents” category  
22 rejected in the Sherman Order. Moreover, like that rejected category, it covers a wide range of  
23 material that “is not strictly design-oriented.”

24           Exhibits from depositions of design patent inventors. As noted above, it is indisputable  
25 that none of these documents fall within the scope of relief granted in the Sherman Order.  
26 Nevertheless, Apple agrees to allow Mr. Sherman to review the confidential portions of the Reply  
27 Declaration of Christopher in Support of Apple’s Motion for a Preliminary Injunction, excluding  
28 the exhibits thereto.

1           The remainder of this category clearly contains material precluded by both the letter and  
2 spirit of the Sherman Order. The category includes “presentations about design functionality”  
3 (Samsung Mot. at 5), which falls squarely in the category rejected in the Sherman Order. For  
4 example, one such presentation contains 73 pages of highly detailed technical information  
5 regarding the iPhone, including schematics showing the physical structure of the iPhone  
6 touchscreen. (Mazza Decl. Ex. C.) This category also includes emails and photographs which  
7 could similarly “reveal[] utility-side details that would benefit Sherman’s work” for Apple  
8 competitors. (Dkt. No. 535 at 3.) For example, one such email contains detailed technical  
9 schematics revealing the physical compositions of what appear to be touchscreens for Apple  
10 devices. (Mazza Decl. Ex. B)

11           As for any purported public documents in this category, Samsung is free to request or  
12 move for de-designation of such documents.

13           Apple’s models and prototypes. This category clearly crosses the line between design and  
14 functionality. Mr. Sherman would be able to study, analyze, and digest not just pure design  
15 information, but actual hardware. There can be no doubt that this would allow him to glean  
16 details of the hardware’s functionality that could benefit his multi-touch company.

17           Declarations by Apple’s design inventors and deposition transcripts and declarations of  
18 Apple’s design experts. As noted, it is indisputable that none of these documents fall within the  
19 scope of relief granted in the Sherman Order. Nevertheless, Apple agrees to allow Mr. Sherman  
20 to review the confidential portions of the declarations of its design inventors that have been filed  
21 to date, excluding confidential exhibits. Apple further agrees to allow Mr. Sherman to review the  
22 confidential portions of the deposition transcript of Cooper Woodring, excluding confidential  
23 exhibits. Mr. Woodring is the only Apple design expert who has provided written or oral  
24 testimony in this case to date.

25           As for documents in this category that do not currently exist, such as any future written or  
26 oral testimony from Peter Bressler or Apple’s design inventors, the Court should deny Samsung’s  
27 motion. There is no way of knowing what any future declarations or transcripts may reveal about  
28 utility-side details of Apple’s products. Such future material, like the documents rejected by the

1 Court in the Sherman Order, may very well be “of a nature that is not strictly design-oriented and  
2 that may contain input from a broader range of Apple’s people and processes.” (Dkt. No. 535 at  
3 3.)

4 **D. The Court Should Reject Samsung’s Request for “Clarification” That the**  
5 **Sherman Order is Without Prejudice to Further Motions.**

6 As discussed above, Samsung had admitted that its previous motion sought the Court’s  
7 permission to show Mr. Sherman “any documents, depositions, and other materials related to  
8 Apple’s designs and design patents, excluding any documents discussing Apple’s multi-touch  
9 technology.” (Samsung Mot. at 4.) That broad description clearly encompasses discovery  
10 material that Apple may produce in the future. The Court denied Samsung’s previous motion,  
11 with the sole exception of the three categories set forth in the Sherman Order. Thus, if Samsung  
12 wishes to show Mr. Sherman any confidential design material that was not discussed in the  
13 Sherman Order—including the categories requested by its current motion, and including any  
14 future discovery materials—it must seek the Court’s leave to move for reconsideration of the  
15 Sherman Order. It cannot bypass that procedure, which is mandated by this District’s Local  
16 Rules, by seeking advance permission to revisit those issues whenever it pleases.

17 **III. CONCLUSION**

18 For the reasons discussed above, the Court should deny Samsung’s motion.

19  
20 Dated: January 17, 2012

MORRISON & FOERSTER LLP

21  
22 By:  /s/ Michael A. Jacobs  
MICHAEL A. JACOBS

23  
24 Attorneys for Plaintiff  
APPLE INC.