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

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

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

Case No. 11-cv-01846-LHK
**APPLE’S MOTION TO COMPEL
 TIMELY PRODUCTION OF
 FOREIGN-LANGUAGE AND OTHER
 DOCUMENTS IN ADVANCE OF
 RELATED DEPOSITIONS**
 Date: February 1, 2012
 Time: 10:00 a.m.
 Place: Courtroom 5, 4th Floor
 Judge: Hon. Paul S. Grewal

1 resolve this discovery dispute without court intervention are described in the Declaration of Mia
2 Mazza and exhibits attached thereto, submitted concurrently herewith.

3 **STATEMENT OF ISSUES TO BE DECIDED**

4 1. Whether Samsung should be required to produce its witnesses' relevant documents
5 containing materials in a foreign language at least ten (10) days in advance of each witness's
6 deposition.

7 2. Whether Samsung should be required to produce its witnesses' relevant English-
8 language documents at least five (5) days in advance of each witness's deposition.

9 Dated: January 27, 2012

MORRISON & FOERSTER LLP

11 By: /s/ Michael A. Jacobs
12 Michael A. Jacobs

13 Attorneys for Plaintiff
14 APPLE INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Samsung has gone from producing no documents to dumping tens of thousands of
4 pages—mostly in Korean—on Apple attorneys on the eve of deposition of the associated
5 custodian. In one case, Samsung produced thousands of pages of materials 40 minutes *after* the
6 deposition had begun. Samsung’s late productions make it impossible for Apple to prepare
7 properly for depositions, particularly as the vast majority of Samsung documents require
8 translation from Korean to English.

9 The documents Samsung is producing now should have been produced a long time ago,
10 not at the last minute; in most cases, they are responsive to discovery requests that have been
11 outstanding for many months. Moreover, when depositions began in October 2011, and Samsung
12 deposed 48 Apple inventors and prosecutors on a highly compressed schedule, the parties agreed
13 to a “five-day rule,” under which Apple agreed to produce custodians’ documents at least five
14 days before their depositions. But now that it is Samsung’s turn to produce its witnesses and their
15 documents, Samsung is following no rule at all.

16 As in the other instances where Samsung has ignored its discovery obligations, the
17 Court’s assistance is necessary for Samsung to provide Apple with the documents Apple is
18 entitled to receive, at the time it is entitled to receive them. To allow Apple to adequately prepare
19 for depositions, Apple asks that the Court set minimum lead times for Samsung to produce a
20 witness’s relevant documents. In particular, Apple requests that Samsung be required to produce
21 a witness’s relevant documents at least 10 days in advance of the deposition if the documents
22 include materials written in a foreign-language, and that Samsung be required to produce other
23 relevant, English-language documents at least five days in advance of the deposition.

24 **II. BACKGROUND**

25 Samsung deposed all of Apple’s inventors and patent prosecutors in October 2011. For
26 purposes of those depositions Apple agreed to produce relevant, responsive, non-privileged
27 documents from an inventor’s or prosecutor’s files no later than five days before his or her
28 deposition. (Declaration of Mia Mazza in Support of Apple’s Motion to Compel Timely

1 Production of Foreign-Language and Other Documents in Advance of Relevant Depositions
2 (“Mazza Decl.”) Ex. A.) With a few isolated exceptions of a small number of late-discovered
3 documents produced three or four days in advance, Apple met this five-day requirement.¹ All of
4 Apple’s documents were in English. (Mazza Decl. ¶ 2.)

5 Samsung has failed to adhere to the same five-day rule that Apple followed for Apple
6 witnesses. After purportedly finishing its preliminary injunction production on October 12, 2011,
7 Samsung stopped producing documents relevant to Apple’s offensive case until December 7,
8 2011. (Mazza Decl. ¶ 4.) It is now playing catch-up. Samsung has begun *routinely* dumping
9 thousands of pages of each witness’s relevant Korean-language materials on the eve of his or her
10 deposition.

11 For example, Apple deposed Samsung witness AhYoung Kim on January 11, 2012. ***Just***
12 ***two days before the deposition***—the first in Apple’s offensive case—Samsung produced 4,409
13 Korean-language documents, totaling 32,330 pages, sourced to Ms. Kim as custodian. (Mazza
14 Decl. ¶ 5.) Because these documents needed to be translated before they could be analyzed and
15 culled for use at deposition, only a small percentage of them could be reviewed by Apple’s
16 outside counsel before the deposition. On January 10, Samsung produced an additional 9,513
17 pages of Korean-language documents sourced to Ms. Kim. (*Id.*) Apple was barely able to
18 process and upload these documents into a repository where they could begin to be reviewed and
19 translated before the deposition began. And on the morning of January 11—***40 minutes after the***
20 ***start of the deposition***—Samsung produced another 3,069 pages of Korean-language documents
21 from Ms. Kim’s files. (*Id.*) Apple’s outside counsel had no chance even to access these
22 untranslated documents until the day after the deposition was over.

23 This egregiously tardy production was the start of a pattern Samsung has continued to
24 follow. That same week, Samsung produced 5,284 pages of Korean-language documents sourced

25
26 ¹ To be precise, Apple typically finished producing documents on the fifth day before the
27 deposition was to take place, no fewer than 105 hours before the deposition began. (Mazza Decl.
28 ¶ 3.)

1 to Junho Park, totaling 32,469 pages, just 63 hours before her deposition began and then produced
2 another 20,135 pages 17 hours later. (*Id.*) Samsung produced 4,607 pages of Korean-language
3 documents sourced to Bo-Ra Kim three-and-a-half days before her deposition. (*Id.*) And before
4 the deposition of Nara Cho on Saturday, January 14, Samsung produced 10,046 Korean-language
5 pages just four days in advance. A chart detailing Samsung's pattern of tardy productions is set
6 forth in the accompanying Declaration of Mia Mazza, filed with this motion. (*Id.*)

7 Even Samsung's English-language productions have come in too late to be meaningfully
8 reviewed, analyzed, and culled in advance of depositions. In the case of Tim Sheppard, Samsung
9 produced 5,256 documents sourced to him, totaling 35,011 pages, just 84 hours before his
10 January 24 deposition. (*Id.*) Apple's outside counsel did what it could to review as many
11 documents as possible before the deposition began, but was unable to complete the review. In
12 that process, Apple determined that the production contained numerous PowerPoint files that
13 were printed illegibly or produced in black and white although created in color. Legible
14 documents were not received by Apple *until the night before the deposition* began. (*Id.*)

15 In all, Samsung has produced 13,169 Korean-language documents (97,516 pages) less
16 than 3 days in advance of its witnesses' depositions, and an additional 15,497 pages of Korean-
17 language materials less than 5 days in advance. (*Id.*) Samsung has also produced 11,958
18 English-language documents, totaling 90,686 pages, fewer than 5 days in advance of related
19 depositions. (*Id.*) The large majority of these documents—*all of which Samsung has already*
20 *selected as relevant in this case*—could not be reviewed by Apple's outside counsel before
21 deposition. Meanwhile, for depositions of Apple witnesses, Apple continues to follow the five-
22 day rule that the parties agreed upon months ago. (*Id.*)

23 Most of the remaining 45-plus depositions of Samsung witnesses will take place in Korea.
24 This will create additional delays as it will take Apple's outside counsel in the U.S. at least two
25 days to transfer translated, culled-down documents to outside counsel taking those depositions.
26 (*Id.*)

1 **III. ARGUMENT**

2 Apple needs Samsung’s Korean-language documents 10 days before each deposition.
3 Samsung is prejudicing Apple’s ability to depose these witnesses effectively by dumping relevant
4 Korean-language documents for each witness far too late for the documents to be reviewed and
5 understood by Apple’s outside counsel. This problem will be compounded significantly when
6 depositions start taking place in Korea and the analysis and culling of documents must be
7 finalized several days before the deposition.

8 This Court has authority to regulate the timing and sequence of discovery and to compel
9 the production of materials responsive to Apple’s document requests. *See* Fed. R. Civ. P. 26(d)
10 & 37. To protect Apple’s ability to prepare for these depositions, Apple asks the Court to set
11 reasonable, minimum deadlines for production of relevant materials from a witness’s files.

12 For documents containing Korean-language text—which comprise the majority of
13 documents produced by Samsung for most of its witnesses—it takes an average of five days for
14 an average-sized Samsung production to be processed, reviewed, culled, translated, and provided
15 to Apple’s outside counsel in a form he or she can meaningfully review and understand for
16 deposition purposes. (*See* Mazza Decl. ¶¶ 9-12.) Uploading the documents to the review
17 database alone can eat up an entire day. (*Id.* ¶ 9.) Once the materials are uploaded, it takes a
18 team of Korean-fluent attorneys at least five days to review, analyze, cull, and translate
19 documents before they can be passed on to Apple’s outside counsel for analysis. (*Id.* ¶¶ 10-12.)
20 Thus, to the extent a Korean-language production is produced less than five days before a
21 deposition, many relevant documents may not even reach outside counsel for consideration in
22 deposition preparation.

23 Once a translated set of documents does reach outside counsel, still more time—at least
24 five additional days—is required to review and analyze the documents for deposition purposes.
25 As the parties acknowledged in creating a “five day rule” when Apple was producing its English-
26 language documents in October 2011, that is the minimum time outside counsel needs to be able
27 to competently process documents produced by the other side for relevant depositions. (*Id.* ¶ 13)

1 For documents in English, Samsung should be ordered to comply with the five-day rule to
2 which the parties agreed. As noted above, five days is the minimum amount of time needed for
3 attorneys to meaningfully review thousands of documents for their potential use at depositions, in
4 light of the steps required to process the materials and to review and understand the complicated
5 web of information Apple needs to untangle. (Mazza Decl. ¶ 13.) For designers, developers, and
6 marketing custodians, Apple must piece together what role the witness played in the design,
7 development, or commercialization of products that took several months and sometimes years to
8 plan, design, develop, and launch. Understanding the development of allegedly-infringing
9 features involves reviewing e-mails and documents containing source code and other technical
10 information. Review of Samsung's financial information is also complicated, as the data on
11 various documents must be pieced together. (*Id.*)

12 Problems with the production, moreover, are often identified in reviewing documents, and
13 it takes several more days for Samsung to turn around corrected documents (if it is willing to do
14 so). (*Id.* ¶ 7.) Apple needs an adequate window between production and deposition for these
15 issues to be fixed, or important documents may not be available for the deposition.

16 In short, to make use of Samsung documents at deposition, the documents must go
17 through a processing, screening, and review process that takes at least five days for a substantial
18 English-language production; that process is extended by at least five additional days when
19 Korean-language documents are produced.

20 Apple is adhering to a five-day rule for producing its witnesses' documents, which are in
21 English. Samsung is thus operating at a significant advantage if it is not required to give Apple at
22 least as much lead-time to review English-language documents, and the additional time needed
23 for Korean-language materials. Samsung has asserted that it need only produce witness
24 documents three days in advance of depositions, citing the Court's December 22, 2011 Discovery
25 Order. That argument fails. The three-day rule in the December 22 Discovery Order expressly
26 applied only to documents that were required to be produced on or before January 15, 2012.
27 (Dkt. No. 537 at 3-4.) And, in any event, many of Samsung's witness productions do not even
28 comply with their purported three-day rule. (*See* Mazza Decl. ¶ 8.)

1 On the day this motion was filed, the Court issued another discovery order (Dkt. No. 673)
2 requiring that “[a]ll productions subject to this order be completed on a rolling basis and no later
3 than February 3, 2012, with priority placed on completing relevant production no later than three-
4 days prior to any deposition.” Again, this rule has no application to other productions not
5 covered by the Order. To the extent the Court’s December 22 and January 27 Discovery Orders
6 were, as Samsung suggests, meant to allow Samsung to produce tens of thousands of pages of
7 Korean-language documents three or fewer day before each custodian’s deposition, Apple
8 respectfully requests reconsideration.

9 **IV. CONCLUSION**

10 For the reasons discussed above, Apple requests that the Court compel Samsung to
11 produce documents for each custodian no later than 10 days before his or her deposition if they
12 contain materials in Korean, and to produce other documents no later than five days in advance.

13 Dated: January 27, 2012

MORRISON & FOERSTER LLP

14
15
16 By: /s/ Michael A. Jacobs
 Michael A. Jacobs

17 Attorneys for Plaintiff
18 APPLE INC.