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 14

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

17 APPLE INC., a California corporation,

18 Plaintiff,

19 vs.

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.  
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CASE NO. 11-cv-01846-LHK (PSG)

**SAMSUNG'S OPPOSITION TO APPLE'S  
 MOTION TO SHORTEN TIME FOR  
 BRIEFING AND HEARING ON APPLE'S  
 MOTION TO COMPEL TIMELY  
 PRODUCTION**

Date: February 1, 2012  
 Time: 10:00 a.m.  
 Place: Courtroom 5, 4th Floor  
 Judge: Hon. Paul S. Grewal

1 **ARGUMENT**

2 Apple' motion to shorten time should be denied because it lacks good cause and Apple has  
3 failed to meet and confer.

4 Plainly Apple has disregarded the Court's recent admonition regarding the burden on this  
5 Court and the prejudice to other litigants imposed by expedited briefing—because Apple could  
6 have avoided expedited briefing entirely had it been diligent. *See* Dkt. No. 657 at 4:10-7:22.  
7 Apple has known about the "three-day rule" imposed by the Court's December 22 Order (requiring  
8 production of documents at least three days before the corresponding deposition) for more than a  
9 month. Apple's assertion that it filed its motion "at its earliest opportunity" after satisfying the  
10 lead counsel meet and confer requirement on January 16, 2012 is simply false. *See* Dkt. No. 679  
11 at 3. Apple sat on this on its motion for reconsideration for nearly *two weeks* after it claims to  
12 have completed lead counsel meet and confer. In fact, Apple even represented to the Court on  
13 January 19 that it had already prepared or was preparing a motion addressing the Court's three-day  
14 rule—yet Apple still waited more than a week before filing its motion. *See* Dkt. No. 657 at 151:3-  
15 13.) Had Apple diligently pursued its motion for reconsideration, there would be no need to  
16 inconvenience other parties in order to have this issue fully briefed and heard over the course of  
17 just *three business days*. Indeed, had Apple filed its motion shortly after the December 22 Order  
18 issued, its motion could have been heard on regular notice and still be resolved by now. Instead,  
19 Apple sat on its hands until the last possible minute—on the eve of an onslaught of Samsung  
20 depositions Apple noticed for February and March—so any apparent urgency is entirely of  
21 Apple's making. Unreasonable delay in bringing a motion is not a proper basis for seeking the  
22 extraordinary relief of having the motion heard on just three business days' notice. Apple's  
23 motion should be denied on this basis alone.

24 Moreover, Apple made no meaningful effort to meet and confer with Samsung to obtain a  
25 stipulation to the time change, as required by Local Rule 6-3, which provides yet another basis for  
26 denying Apple's motion. Despite the fact that Apple claims to have completed lead counsel meet  
27 and confer on its motion for reconsideration on January 16, Apple waited eleven more days—until  
28 Friday, January 27 at 7:05 p.m.—to email Samsung regarding its intention to have its motion

1 heard on shortened time. (Declaration of Joby Martin In Support of Samsung’s Opposition to  
2 Apple’s Motion to Shorten (“Martin Decl.”) ¶ 3.) Worse, Apple gave Samsung just *55 minutes to*  
3 *respond*, demanding that Samsung agree by 8 p.m. that evening to file its opposition papers just  
4 one business day later. (*Id.*) Apple’s tactics are in bad faith. Plainly Apple knew—and didn’t  
5 care—that it would be impossible for Samsung to confer internally and with its client in the space  
6 of 55 minutes on a Friday night (which of course was Saturday in Korea) and get back to Apple on  
7 the issue of shortened time. Nevertheless, counsel for Samsung immediately responded just nine  
8 minutes later, and in a series of emails Samsung requested clarification of Apple’s cryptic email  
9 and asked for the courtesy of a day to respond. (Martin Decl. ¶ 4.) Apple ignored this request,  
10 and simply filed its motion shortly thereafter. (*Id.*) Samsung is confident that the parties could  
11 have agreed to some sort of a shortened schedule had Apple given Samsung proper notice of its  
12 request and a fair opportunity to respond. Because Apple did not do so, its motion to shorten  
13 should be denied for this reason as well.

14 In closing, Samsung respectfully requests that the Court deny Apple’s motion. However,  
15 if the Court is inclined to grant some relief from the regular notice period, Samsung suggests that  
16 the Court adopt the following briefing schedule:

- 17 • Samsung’s Opposition to Apple’s motion will be filed on Friday, February 3, 2012;
- 18 • Apple waives its reply due to shortened time; and
- 19 • The hearing will be held on Tuesday, February 7, 2012, consistent with the Court’s  
20 regular law and motion calendar.

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**CONCLUSION**

For the foregoing reasons, Samsung respectfully requests that the Court deny Apple’s  
Motion to Shorten Time for Briefing and Hearing on Apple’s Motion to Compel Timely  
Production of Foreign-Language and Other Documents in Advance on Related Depositions.

1 DATED: January 29, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

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