

1 HAROLD J. MCELHINNY (CA SBN 66781)
 hmcclhinny@mofo.com
 2 MICHAEL A. JACOBS (CA SBN 111664)
 mjacobs@mofo.com
 3 RICHARD S.J. HUNG (CA SBN 197425)
 rhung@mofo.com
 4 MORRISON & FOERSTER LLP
 425 Market Street
 San Francisco, California 94105-2482
 5 Telephone: (415) 268-7000
 Facsimile: (415) 268-7522

6
 7 Attorneys for Plaintiff
 APPLE INC.

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

WILLIAM F. LEE (*pro hac vice*)
 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

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

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

Case No. 11-cv-01846-LHK

**APPLE INC.'S OBJECTION TO
 SAMSUNG'S REQUEST FOR
 JUDICIAL NOTICE REGARDING
 APPLE'S CLAIM CONSTRUCTION
 POSITIONS ON U.S. PATENT NO.
 7,469,381**

1 Samsung's Request for Judicial Notice is an unauthorized, untimely sur-reply to Apple's
2 Opening Claim Construction brief. Because Samsung has failed to satisfy the requirements of
3 Civil Local Rule 7-3(d) and Federal Rule of Evidence 201, its request should be denied.

4 First, Samsung has not complied with Civil Local Rule 7-3(d), which prohibits, with
5 limited exceptions, the filing of "additional memoranda, papers or letters . . . without prior Court
6 approval." Samsung's argument that "[t]he stocks list has an internal edge within the Stocks
7 application document, and content exists beyond this internal edge" (Request at 3), is an attempt
8 to offer additional claim construction arguments, eleven days after the *Markman* hearing. Rule 7-
9 3 does not authorize such additional briefing; the only exceptions to Rule 7-3(d) contemplate
10 supplementation shortly after the filing of the reply brief or *before* the hearing. Moreover,
11 Samsung mischaracterizes the content of the two exhibits before the Court. There is not, as
12 Samsung contends, "an internal edge" in the stocks list. Rather, the stocks list has an external
13 edge, beyond which is a graph. *See* Request at 3; *see also* Samsung's Ex. 2 at 2 (noting that the
14 "list of stocks" is the electronic document in question, not the Stocks application as a whole). If
15 Samsung's argument were correct, one would expect the rubber-banding or bounce feature to
16 occur, for example, between each listed stock, and not at the actual edge of the entire list. This is
17 not the case, as seen in Samsung's own video. Accordingly, far from supporting Samsung's
18 contention, the two exhibits at issue in Samsung's request are fully consistent with Apple's
19 position regarding "an edge of the electronic document."

20 Second, Samsung's request is untimely. Samsung asserts that "Samsung's counsel
21 became aware of these documents just days before the claim construction hearing." (Request at
22 2.) While Samsung admits that the documents at issue have existed for over half a year (since
23 July 8, 2011), it fails to mention that its counsel, Quinn Emanuel Urquhart & Sullivan, LLP, is
24 also counsel of record in the ITC investigation in question, No. 337-TA-797. The respondent
25 there, HTC Corporation, is represented by Quinn Emanuel. Samsung offers no justification for its
26 own counsel's failure to timely raise this issue.

27 Third, Samsung's request does not comply with Rule 201, and is not even backed by the
28 only case cited in support of Samsung's position. *Kurtcy v. U.S. Parking Inc.*, 08-cv-2113

1 (WHA), 2008 WL 2445080, at *2 (N.D. Cal. June 16, 2008), as quoted by Samsung, stands for
2 the proposition that “judicial notice may be taken of *orders and decisions* taken by other courts
3 and administrative agencies.” (emphasis added.) Neither a complaint filed with the International
4 Trade Commission nor a claim chart attached thereto (Exhibits 1 and 2 to Samsung’s request)
5 satisfies this legal standard. Moreover, Exhibit 3 to the request is an unauthenticated video
6 created by counsel for Samsung, and plainly does not constitute “a fact” of which the Court may
7 take notice. *See* Fed. R. Evid. 201(b); *Natural Wellness Centers of America, Inc. v. J.R. Andorin*
8 *Inc.*, No. 11-cv-4642 (EDL), 2012 WL 216578, at * 4 (N.D. Cal. Jan. 24, 2012) (declining to take
9 judicial notice of proffered evidence “because it has not been properly authenticated and is not
10 capable of accurate and ready determination pursuant to Federal Rule of Evidence 201”).

11 Finally, Samsung’s request should be denied because it essentially seeks to resolve a
12 disputed issue through the procedure for judicial notice. *See, e.g., Heller v. Cepia, LLC*, No. 11-
13 cv-1146 (JSW), 2012 WL 13572, at *5 n.2 (N.D. Cal. Jan. 4, 2012) (where parties disputed an
14 issue of fact and requested “judicial notice of documents which purport to support their respective
15 positions,” the court denied the parties requests because “the parties, through their respective
16 requests for judicial notice, inappropriately seek to have the Court resolve factual disputes . . .”).
17 Samsung was afforded ample opportunity to identify evidence in support of its claim
18 constructions, and it should not be allowed now to undermine that process under the guise of
19 Federal Rule of Evidence 201. For all these reasons, Samsung’s request should be denied.

20
21 Dated: February 1, 2012

MORRISON & FOERSTER LLP

22 By: /s/ Michael A. Jacobs
23 Michael A. Jacobs

24 Attorneys for Plaintiff
25 APPLE INC.
26
27
28