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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 business entity; SAMSUNG  
ELECTRONICS AMERICA, INC., a New York  
corporation; SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC, a  
Delaware limited liability company,  
Defendants.

Case No. 11-cv-01846-LHK

**[PROPOSED] ORDER GRANTING  
APPLE'S MOTION FOR  
ATTORNEYS' FEES AND COSTS IN  
CONNECTION WITH MOTION TO  
COMPEL DEPOSITIONS OF 14 OF  
SAMSUNG'S PURPORTED "APEX"  
WITNESSES**

1           On February 15, 2012, Apple moved to compel the depositions of 14 high-level Samsung  
2 employees following Samsung’s repeated refusal to produce the witnesses for their noticed  
3 depositions under the “apex” doctrine. (*See* Mot. To Compel Depositions of 14 of Samsung’s  
4 Purported “Apex” Witnesses.) As explained in the Order granting that Motion, Samsung’s  
5 position was unjustified. As a result, Apple is entitled to recover its expenses, including  
6 attorney’s fees, in connection with the motion to compel.

7           When a motion to compel is granted, “the court *must*, after giving an opportunity to be  
8 heard, require the party or deponent whose conduct necessitated the motion, the party or attorney  
9 advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the  
10 motion, including attorney’s fees.” Fed. R. Civ. P. 37(a)(5)(A) (emphasis added); *see also* Civ. L.  
11 R. 37-4. Rule 37(a)(5)(A) provides exceptions to this mandatory rule only if the opposing party  
12 can establish “(i) the movant filed the motion before attempting in good faith to obtain the  
13 disclosure or discovery without court action; (ii) the opposing party’s nondisclosure, response, or  
14 objection was substantially justified; or (iii) other circumstances make an award of expenses  
15 unjust.” Fed. R. Civ. P. 37(a)(5)(A). The prevailing party is also entitled to reimbursement of the  
16 expenses incurred in connection with preparing a motion for fees and costs. *Matlink, Inc. v.*  
17 *Home Depot U.S.A., Inc.*, No. 07cv1994-DMS (BLM), 2008 WL 8504767, at \*6 (S.D. Cal. Oct.  
18 27, 2008), *citing Anderson v. Dir., Office of Workers Comp. Programs*, 91 F.3d 1322, 1325 (9th  
19 Cir. 1996).

20           Samsung did not establish that any of the exceptions barring recovery of fees and costs  
21 exist. Apple filed the motion to compel after “attempting in good faith to obtain the [depositions]  
22 without court action[.]” *See* Fed. R. Civ. P. 37(a)(5)(A)(i). Samsung lacked a substantial  
23 justification for its refusal to produce the 14 witnesses for deposition. *See id.* at 37(a)(5)(A)(ii).  
24 Finally, there are no “other circumstances mak[ing] an award of expenses unjust.” *Id.* at  
25 37(a)(5)(A)(iii). Accordingly, Rule 37(a)(5)(A) mandates an award of Apple’s attorneys’ fees  
26 and costs.

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For the reasons discussed above, the Court grants Apple’s motion for expenses and **ORDERS** Samsung to pay the expenses as itemized in the Supplemental Declaration filed by Apple.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2012

By: \_\_\_\_\_  
Hon. Paul S. Grewal  
United States District Court Judge