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14 AMERICA, INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC
15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

21 SAMSUNG ELECTRONICS CO., LTD., a
Korean business entity; SAMSUNG
22 ELECTRONICS AMERICA, INC., a New
York corporation; SAMSUNG
23 TELECOMMUNICATIONS AMERICA,
LLC, a Delaware limited liability company,

24 Defendants.
25

CASE NO. 11-cv-01846-LHK

**DECLARATION OF SARA JENKINS IN
SUPPORT OF SAMSUNG'S OPPOSITION
TO APPLE'S MOTION FOR RULE
37(B)(2) SANCTIONS**

Date: March 6, 2012

Time: 10:00 a.m.

Place: Courtroom 5, 4th Floor

Judge: Hon. Paul S. Grewal

REDACTED

1 I, Sara Jenkins, declare:

2 1. I am an associate in the law firm of Quinn Emanuel Urquhart & Sullivan, LLP,
3 counsel for Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung
4 Telecommunications America, LLC (collectively, "Samsung"). I am licensed to practice law in
5 the State of California. I submit this declaration in support of Samsung's Opposition to Apple's
6 Motion to For Rule 37(B)(2) Sanctions for Samsung's Violation of Two Discovery Orders. I
7 have personal knowledge of the facts set forth in this declaration and, if called upon as a witness, I
8 could and would testify to the following facts.

9 **The Court Sets Strict Limits For "Narrowly Tailored" Preliminary Injunction Discovery.**

10 2. Early in the case, Apple urged the Court to adopt an expedited and limited
11 discovery schedule for its "focused," motion "limited to three design patents and one utility
12 patent." (Dkt. No. 100 at 1, 2.) Based on these representations, the Court limited the
13 injunction-related discovery phase, instructing the parties to "keep discovery requests reasonable
14 in scope and narrowly tailored to address the preliminary injunction motion." (Dkt. No. 115. at
15 2.)

16 3. Over the next several months, Apple repeatedly stated that the scope of discovery
17 for the preliminary injunction was "narrowly tailored," in justifying its limited production of
18 documents in response to Samsung's discovery requests. Attached as **Exhibit A** is a true and
19 correct copy of an August 5, 2011 letter from Jason Bartlett to Victoria Maroulis. In this letter,
20 Apple refused to provide complete discovery responses regarding Apple's infringement positions
21 relating to the four Apple patents at issue in the preliminary injunction motion stating that
22 "Samsung's 'discovery requests [should be] reasonable in scope and narrowly tailored to address
23 the preliminary injunction motion."

24 4. Similarly, in its preliminary injunction-related discovery responses, Apple made
25 clear that it was only "conducting a reasonable investigation appropriate for the limited
26 preliminary injunction discovery." Attached hereto as **Exhibit B** is a true and correct copy of
27 Apple's Supplemental Responses to Interrogatories 1,3, and/or 6 dated 9/30/11.

1 **Apple Propounds Belated and Sweepingly Broad Preliminary Injunction Discovery**
2 **Demands**

3 5. In contrast to the two-month time-frame Samsung gave Apple to respond to
4 Samsung's preliminary injunction-related document requests (serving them on July 6, 2011),
5 Apple waited until August 26, 2011 – the very last day for propounding such discovery and over
6 two months after it filed its preliminary injunction motion – before serving the vast majority of its
7 preliminary injunction discovery requests.

8 6. Apple effectively sought a full-fledged production of general discovery in just
9 seventeen days. Below are just some of Apple's preliminary injunction requests that capture the
10 breadth of subject matter that Apple pursued:

11 a. **REQUEST NO. 158:** All Documents relating to the design, development,
12 or implementation of the following features of the Products at Issue: (1) their Hardware
13 Design; (2) the functionality that allows for a list to be scrolled beyond its terminus or a
14 document to be translated beyond its edge until the list or document is partially displayed;
15 and (3) functionality that allows for a list that is scrolled beyond its terminus to scroll back
16 or bounce back into place or for a document that is translated beyond its edge to translate
17 back or bounce back so that the list or document returns to fill the screen.

18 b. **REQUEST NO. 161:** All Documents and things relating to the design of
19 the Hardware Design of the Products at Issue, including for example, CAD images or files,
20 emails, notebooks, photographs, sketches, design specifications, models, mock-ups, and
21 other design documents.

22 c. **REQUEST NO. 163:** All Documents relating to functional and cost
23 considerations that constrained or altered the Hardware Design of the Products at Issue.

24 d. **REQUEST NO. 164:** All Documents relating to aesthetic considerations
25 relating to the Hardware Design of the Products at Issue.

26 e. **REQUEST NO. 167:** All Documents to the design of the user interface for
27 each of the Products at Issue.

1 f. **REQUEST NO. 204:** All Documents relating to your analysis, review,
2 consideration, or copying of, or comparison against, any Apple product or product feature,
3 including (1) their Hardware Design; (2) the functionality that allows for a list to be
4 scrolled beyond its terminus or a document to be translated beyond its edge until the list or
5 document is partially displayed; and (3) functionality that allows for a list that is scrolled
6 beyond its terminus to scroll back or bounce back into place or for a document that is
7 translated beyond its edge to translate back or bounce back so that the list or document
8 returns to fill the screen.

9 g. **REQUEST NO. 206:** All Documents relating to any customer surveys,
10 studies, analyses or investigations regarding the Products at Issue.

11 h. **REQUEST NO. 207:** All Documents identifying or analyzing the market
12 or markets to which Samsung intends to sell the Products at Issue.

13 i. **REQUEST NO. 208:** All Documents created within the last five years
14 relating to Samsung's actual or projected smartphone market share.

15 j. **REQUEST NO. 209:** All Documents created within the last five years
16 relating to Samsung's actual or projected tablet computer market share.

17 k. **REQUEST NO. 214:** All Documents relating to marketing of any Products
18 at Issue that discuss or refer directly or indirectly to Apple or Apple products, including
19 copies of all advertisements or other promotional materials, marketing plans, market
20 surveys, focus group studies, or other documents related to testing of advertisements or
21 advertisement messaging. Documents responsive to this Request include, but are not
22 limited to, your "Hello" marketing campaign relating to the Galaxy S, your "See Flash
23 Run" marketing campaign for the Galaxy Tab, and your "Appelmos" ("Applesauce")
24 marketing campaign relating to the Galaxy S II.

25 l. **REQUEST NO. 215:** All Documents relating to any instances of consumer
26 confusion in which Samsung was made aware that a person confused an Apple product for
27 a Product at Issue, or a Product at Issue for an Apple product.

1 7. Apple's belated service of its requests proved extremely burdensome to Samsung,
2 given the large number of document custodians and the difficulties of collecting documents
3 overseas.

4 8. On September 1, 2011, four business days after receiving Apple's August 26
5 document requests, Samsung began producing documents to Apple. Samsung ultimately
6 produced preliminary injunction-related documents both before and after the rolling deadline (as
7 Apple did with its preliminary injunction production), providing them to Apple as expeditiously as
8 possible given the circumstances. Samsung had produced more than 32,000 pages of documents
9 by September 20, 2011.

10 **Samsung's Substantial Compliance with the September 28 Order**

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
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[REDACTED]

Apple Warns Samsung to Expect to See Documents Responsive to Samsung's Preliminary Injunction Requests During the General Discovery Phase

15. Attached hereto as **Exhibit D** is a true and correct copy of a letter from Michael Jacobs to Victoria Maroulis dated October 7, 2011 in which Mr. Jacobs warns Samsung that “[s]ome of the documents located as part of” Apple’s general discovery process “may also be responsive to Samsung’s preliminary injunction discovery requests.”

1 **Apple's December Motion to Compel and the Court's December 22, 2011 Order**

2 16. At the time of Apple's filing of a motion to compel on December 8, the parties had
3 been in the midst of negotiating various discovery agreements, including an agreement to
4 reciprocally produce [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 **Samsung's Substantial Compliance with the Court's December 22 Order**

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 **Apple's Failure to Produce Relevant Documents Prior to the Preliminary Injunction**

2 **Hearing**

3 21. As preliminary injunction discovery came to a close, Samsung discovered that
4 Apple had failed to produce material evidence that was responsive to Samsung's discovery
5 requests during the preliminary injunction phase.

6 22. Samsung had requested emails from Apple's design inventors of Apple's asserted
7 patents during preliminary injunction related discovery. Attached hereto as **Exhibit G** is a true
8 and correct copy of excerpts of Samsung's Requests for Production of Documents and Things
9 Relating to Apple Inc.'s Motion for a Preliminary Injunction, dated July 6, 2011.. Apple
10 ultimately admitted that it had never searched its design inventors' email for responsive
11 documents.

12 23. Apple failed to produce a highly relevant [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] This document is responsive to Samsung's preliminary injunction
18 requests, but Apple did not produce it until after the preliminary injunction hearing.

19 24. Attached hereto as **Exhibit I** is a true and correct copy of excerpts taken from the
20 deposition of Christopher J. Stringer, dated February 15, 2012.

21 25. Apple has produced numerous documents describing [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED] [REDACTED]
24 [REDACTED]
25 [REDACTED] [REDACTED]
26 [REDACTED]
27 [REDACTED] [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 26. Apple periodically has experienced technical problems with its document
10 production. For instance, notwithstanding the Court’s December 22, 2011, Order to produce
11 documents three (3) days before deposition, Apple dropped approximately 17,000 pages of
12 documents on Samsung the night before the scheduled deposition of Richard Dinh, citing “a
13 technical issue.” Attached hereto as **Exhibit O** is a true and correct copy of a letter from Mia
14 Mazza to Sara Jenkins, dated February 15, 2012.

15 27. On January 27, 2012, the Court Ordered that Apple produce several categories of
16 documents, and that “[a]ll production subject to this order must be completed on a rolling basis
17 and no later than February 3, 2012, with priority placed on completing relevant production no later
18 than three-days prior to any deposition.” (Dkt. No. 673 at 2) Yet, Apple recently admitted that
19 Apple did not comply in several respects with the Court’s Order. First, Apple admitted that “due
20 to processing errors.” Apple could not produce Bates numbered survey reports, marketing reports,
21 and media plans for iPhone, iPod touch, and iPad products until February 9, six days after the
22 court-ordered deadline. Second, Apple admitted that is still searching for and producing
23 documents responsive to Samsung’s Request for Production No. 55, now twenty days after the
24 court-ordered deadline. Third, Apple admitted that it produced its “Financial Documents” on
25 February 5 and February 16, 2012, between two and thirteen days after the court-ordered deadline.

26 I declare under penalty of perjury under the laws of the United States that the foregoing is
27 true and correct.

Executed in Redwood Shores, California on February 25, 2012.

By /s/ Sara Jenkins

Sara Jenkins

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