

# Exhibit 1

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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

**SAMSUNG'S OPPOSITION TO APPLE'S  
MOTION TO COMPEL APEX  
WITNESSES**

Date: March 27, 2012

Time: 10:00 a.m.

Place: Courtroom 5, 4th Floor

Judge: Hon. Paul S. Grewal

26  
27 **FILED UNDER SEAL**  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Apple’s motion to compel the depositions of certain high-ranking Samsung “apex”  
4 executives should be denied. Under federal law, high-ranking executives should only be subject to  
5 deposition if two conditions are met. First, the executives must have unique, personal knowledge  
6 that is relevant to the case. Second, the party seeking the deposition must exhaust less  
7 burdensome means of discovery before deposing apex witnesses. Here, Apple meets neither  
8 requirement. The purported evidence it cites shows only that certain of these apex executives have  
9 *some* relevant knowledge – not the unique knowledge the standard requires. And as for Apple’s  
10 claim that it has been unable to obtain the discovery it needs from lower level employees, the  
11 record confirms otherwise. The lower level employees whom Apple has deposed indeed answered  
12 Apple’s questions; that Apple may not like the answers is beside the point. Nor can Apple  
13 credibly dispute that the numerous 30(b)(6) witnesses Samsung has designated entirely moot  
14 Apple’s demand for apex executives.

15 Finally, Apple does not deserve access to Samsung’s senior executives because the record  
16 confirms that for the Samsung executives Apple has deposed thus far, Apple has abused the  
17 discovery process by coming unprepared and wasting witnesses’ time asking needless and  
18 harassing questions. Because Apple cannot justify the significant disruption to Samsung’s  
19 business that would be triggered by these apex depositions, Apple’s Motion to Compel should be  
20 denied.

21 **STATEMENT OF FACTS**

22 To expedite this Court’s review of the parties’ cross-motions, Samsung hereby refers to and  
23 incorporates herein by reference its Statement of Facts from its parallel Motion for Protective  
24 Order Regarding Certain Samsung Apex Executives (Dkt No. 754) (“Samsung’s MPO”).  
25 Samsung will include in this opposition brief only the additional non-duplicative facts and  
26 arguments necessary for the Court to decide these motions.

1                   **Apple’s Repeated Refusals To Discuss Reasonable Limitations On Apex Discovery**

2                   Between January 5, 2012, when Samsung first raised its apex objections to the depositions  
3 of certain senior executives, and the date of this filing, Samsung has repeatedly narrowed its apex  
4 objections down from 23 to 17, to 14, to 10, to 9 executives. Declaration of Joby Martin in  
5 Support of Samsung’s Opposition to Apple’s Motion to Compel Apex Witnesses (Martin Decl.  
6 ¶ 3.) During that time, Apple refused to make even a single concession as to any of Samsung's  
7 apex executives. (*Id.*) On March 2, 2012, for the first time, Apple offered to drop its demand for  
8 the deposition of one of Apple's apex executives, if Samsung would agree not to depose Deborah  
9 Goldsmith, a critical witness whom another Apple witness described as knowledgeable regarding  
10 the world clock feature – the precise feature accused by Samsung’s ‘055 patent in this case. (*Id.*)  
11 Apple's offer was unacceptable given the critical importance of Ms. Goldsmith, but Samsung did  
12 propose in a counteroffer to drop another witness in exchange for Apple dropping Mr. Chi – Ms.  
13 Goldsmith's supervisor, George Dicker. (*Id.*) As of this filing, Apple has not responded to  
14 Samsung's offer. (*Id.*)

15                   **Apple's Wasteful Depositions of Certain Samsung Senior Executives**

16                   To date Apple has deposed several senior Samsung executives. For example, on February  
17 17, 2012, Apple deposed Don Joo Lee, Executive Vice President of Sales and Marketing at SEC  
18 Mobile Communications. [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27                   Similarly, on March 1, 2012, Apple deposed Sungsik Lee, Vice President of UX Design  
28 Part 1. (Martin Decl. ¶ 8.) [REDACTED]

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[REDACTED]

**Samsung's Further Meet and Confer Efforts**

Even after Apple filed its motion to compel, and after Samsung filed its protective order motion, Samsung continued the meet and confer process, and dropped its apex objection to yet another executive, Dr. Seungho Ahn. (Martin Decl. ¶ 3.) Thus, as a result of several rounds of compromise on Samsung's part, and despite no meaningful compromise on Apple's part, Samsung now objects to the depositions of just nine of the senior level executives Apple noticed and seeks to compel:

1. Gee Sung Choi, Vice-Chairman and Chief Executive Officer of SEC;
2. Jong Kyun Shin, President of Mobile Communications for SEC;
3. Won-Pyo Hong, Executive Vice President of Product Strategy of Mobile Communications for SEC;
4. Heonbae Kim, Executive Vice President of the Korea R&D Team of Mobile Communications for SEC;
5. Seunghwan Cho, Executive Vice President of Advanced Software Research and Development Team 2 of Mobile Communications for SEC;
6. Dong Jin Koh, Executive Vice President of the Technology Strategy Team of Mobile Communications for SEC;
7. Jaewan Chi, Executive Vice President in SEC's Intellectual Property Center;
8. Dale Sohn, President and Chief Executive Officer of STA; and
9. Joseph Cheong, Chief Financial Officer of STA.

1 **Legal Standard**

2 Samsung incorporates by reference the legal standard set forth in its MPO.

3 **Argument**

4 Apple’s Motion to Compel the depositions of nine Samsung executives, all of whom hold  
5 the title of Executive Vice President or higher, should be denied under the apex doctrine.<sup>1</sup> This  
6 Court should preclude the depositions of these high-ranking executives because: (1) Apple has  
7 failed to demonstrate that the information sought from these executives is both unique, first-hand,  
8 and non-repetitive, and not known by any other Samsung employee; (2) Apple has not made an  
9 attempt to obtain information regarding the disputed issues through other less intrusive and  
10 burdensome means, (3) Apple's deposition conduct with respect to the senior Samsung executives  
11 Apple has deposed suggests that Apple is more interested in wasting time than gathering evidence,  
12 and (4) Apple has again disregarded this Court’s directives in failing to meaningfully meet and  
13 confer on apex issues.

14 **I. APPLE HAS NOT SATISFIED THE REQUIREMENTS FOR AN APEX**  
15 **DEPOSITION OF ANY OF THE EXECUTIVES IT SEEKS.**

16 At the outset, Apple tries to lay out a variety of circumstances under which courts  
17 purportedly have permitted depositions of apex witnesses, including where the “witness was the  
18 ultimate decision-maker,” “had hands-on involvement with a relevant issue,” “[p]erformed a  
19 relevant analysis,” “[a]uthored or received relevant correspondence,” or participated in relevant  
20 discussions. (MTC at 6). But these examples merely illustrate the kinds of situations that may  
21 give rise to an executive having unique, first-hand and non-repetitive information necessary to  
22 satisfy the federal requirements for deposing an apex witness. They do *not* prove that Apple has  
23 met the first prong of the standard in this case.

24 \_\_\_\_\_  
25 <sup>1</sup> See *Groupon, LLC v. Groupon, Inc.*, 2012 WL 359699, at \*1 (N.D. Cal. Feb. 2, 2012)  
26 (denying request to depose four Senior Vice Presidents); *Hardin v. Wal-Mart Stores, Inc.*, 2011  
27 WL 6758857, at \*1-2 (E.D. Cal. Dec. 22, 2011) (noting that there is “no question” that an  
28 Executive Vice President “is a busy, high-ranking executive” subject to the apex doctrine); *Baine*  
141 F.R.D. at 332 (granting protective order for Vice President under the apex doctrine).

1 Nor does Apple meet the second prong of the apex test. Apple begins by merely restating  
2 the obvious: that exhaustion has been found “where the party seeking discovery has already  
3 deposed lower-level employees or conducted written discovery....” (MTC at 6). But Apple’s  
4 regurgitation of the apex standard hardly satisfies it. Apple’s contention, moreover, that  
5 exhaustion may be shown where a party has flouted the discovery rules is irrelevant since Apple  
6 cannot show that Samsung has failed to produce Rule 30(b)(6) witnesses.<sup>2</sup> Finally, Apple’s claim  
7 that “some courts have acknowledged that less intrusive discovery methods *may not exist*” if a  
8 witness has direct knowledge and active participation in the events at issue, (*id.* at 7) (emphasis  
9 supplied), simply restates the federal requirement that an apex witness must have “specific and  
10 unique,” (*id.*), information before he or she may be deposed – a standard Apple fails to meet.

11 Apple’s own successful efforts to secure a protective order for, and defeat a motion to  
12 compel the deposition of, the late Chief Executive Officer Steve Jobs only highlights the  
13 inconsistency of Apple’s attempt to subject Samsung’s senior executives to depositions. *See*  
14 *Affinity Labs of Texas v. Apple, Inc.*, 2011 WL 1753982, \*1 (N.D. Cal. 2011) (denying Plaintiff’s  
15 motion to compel and granting Apple’s motion for a protective order). The arguments Apple  
16 made to defeat the compelled deposition of Mr. Jobs are equally applicable to Samsung’s senior  
17 executives. *See id.* (upholding Apple’s position that Affinity Labs failed to show that “Jobs  
18 possesses unique, personal non-repetitive firsthand knowledge of relevant facts,” or that “Affinity  
19 has exhausted less burdensome means to obtain that information.”) Indeed, as a witness-by-  
20 witness examination of Apple’s Motion reveals, Apple cannot establish either that Samsung’s  
21 executives have unique and particularized knowledge or that it has exhausted other, less intrusive  
22 means to obtain the desired information. Accordingly, Apple’s Motion should be denied.

23 Samsung hereby incorporates by reference the reasons set forth in its MPO for why each of  
24 these apex executives should not be compelled to sit for deposition. The following discussion  
25 addresses only the new arguments raised in Apple’s present motion.

26 \_\_\_\_\_

27 <sup>2</sup> Apple’s inaccurate claim as to the number of such witnesses Samsung has produced is  
28 addressed *infra* at 13 n. 8.

1           **A.      CEO Gee Sung Choi Is An Apex Executive And Has No Unique, Personal**  
2                           **Knowledge That Cannot Be Obtained Through Other Means.**

3           Apple claims it seeks to depose Mr. Choi because he is “responsible for the direction of the  
4 company in matters highly relevant to this case.” (Kassabian Decl. Ex. B at 2.) [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8           [REDACTED] But these allegations do not demonstrate unique and particularized  
9 knowledge that cannot be obtained through other means. Of course, Mr. Choi – as CEO and Vice  
10 Chairman – is responsible for the direction of the company in *all matters*. Allowing the deposition  
11 of an apex witness based on involvement in product strategy meetings would effectively eviscerate  
12 the protections the apex doctrine affords.

13           Apple’s reliance on an email message, in [REDACTED]  
14 [REDACTED]  
15 [REDACTED], is misplaced. [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19           As Apple recognized in opposing the compelled deposition of Mr. Jobs, an apex deposition  
20 may be disallowed when it is based on generalized statements the executive made to the public  
21 when the disputed information was available through other means, including discovery of lower-  
22 level employees. *See Affinity Labs*, 2011 WL 1763982, at \*7 (“Because it failed to seek any  
23 discovery regarding these seven statements, Apple argues that that Affinity’s Motion to compel  
24

25 \_\_\_\_\_  
26 <sup>3</sup> Apple's description of this document is misleading. [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



1           **C. Apex Executives Won Pyo Hong and Dong Jin Koh Have No Unique, Personal**  
2           **Product Design Knowledge Unavailable Through Other Means.**

3           Apple erroneously claims that it “needs to depose the Samsung employees who were  
4 responsible, at the strategic decision-making level,” (MTC at 12), for products it alleges Samsung  
5 copied from Apple. In so arguing, Apple points to two executives it claims oversaw product  
6 strategy and design: Won Pyo Hung, Executive Vice-President of the Product Strategy team in  
7 Samsung’s Mobile Communications division, (Hong Decl. ¶ 2), and Dong Jin Koh, the Executive  
8 Vice President of the Technology Strategy team of the Wireless, or Mobile Communications,  
9 division, (Declaration of Dong Jin Koh (“Koh Decl.”) ¶ 2).<sup>5</sup> Apple provides no basis to depose  
10 either executive.

11           **1. Won Pyo Hong**

12           Apple’s claim [REDACTED]  
13 [REDACTED]  
14 [REDACTED] is sheer conjecture. [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17           [REDACTED] This tenuous connection is inadequate.

18           Again, Apple has not identified any unique, personal knowledge he might have that cannot  
19 be obtained from lower level employees. Apple will have, or has had, the opportunity to depose  
20 numerous witnesses who were involved in the day-to-day design and development of the products  
21 at issue, including eighteen lower-level employees, and the three Vice Presidents who were  
22 responsible for the parts that actually designed the products at issue. (Declaration of Samuel S.  
23 Lee in Support of Samsung’s Motion for a Protective Order (Dkt. 754) “Lee Decl.” ¶ 6.) Apple  
24 will also depose Senior Vice President DongHoon Chang, the head of the Product Design Group.

25 \_\_\_\_\_  
26           <sup>5</sup> As indicated above, Apple’s Motion to Compel the deposition of Dong Hoon Chang, Senior  
27 Vice President and Head of Product Design for the Mobile & Communications Division, is moot  
28 since Samsung has not sought a Protective Order for Mr. Chang.

1 In addition, Samsung has designated a 30(b)(6) witness on several topics related to the Product  
2 Strategy Team’s activities. (See Kassabian Decl. ¶ 22.) Apple does not even attempt to show why  
3 these depositions are insufficient. Until Apple completes the depositions of lower level employees  
4 and Senior Vice President DongHoon Chang, it cannot plausibly demonstrate any need to depose  
5 Mr. Hong. See *In re Google Litig.*, 2011 WL 4985279, at \*2 (noting that Sergey Brin may not be  
6 deposed until the plaintiff completed the depositions of other witnesses and “identif[ied] topics  
7 that only Brin [could] address.”)

8 **2. Dong Jin Koh**

9 For similar reasons, Apple cannot demonstrate a legitimate basis to depose apex witness  
10 Dong Jin Koh. Once again, Apple’s rationale is based on little more than his position as the head  
11 of a management group involved in the development of the products at issue. Apple claims that  
12 Mr. Koh “is the head of Samsung’s R&D Management Group” and that “[i]ndividuals within the  
13 R&D Management Group have generated numerous documents” that discuss the products at issue.  
14 (MTC at 12). However, the mere fact that some of the lower level employees who indirectly  
15 report to Mr. Koh were involved in the development of the products at issue does not prove either  
16 that Mr. Koh (as a manager removed from day-to-day decision-making over product design issues)  
17 has unique, non-repetitive knowledge, or that any relevant information cannot be obtained from  
18 employees in his division, particularly since Apple will have ample opportunity to depose lower-  
19 level employees with knowledge of product design issues. See *supra* at 7-8. Apple thus fails to  
20 advance any basis for deposing Mr. Koh.

21 **D. Apex Executives Heonbae Kim And Seunghwan Cho Have No Unique,**  
22 **Personal Knowledge That Cannot Be Obtained Through Other Means.**

23 Apple also seeks to compel depositions of two high-ranking executives in Samsung’s  
24 engineering and strategy divisions whom it claims were “responsible for developing the specific  
25 features that Apple contends infringe its utility patents.” (MTC at 13). Apple again is wrong.

26 In attempting to justify the depositions of these apex witnesses, Apple claims that Mr. Kim  
27 “purportedly contributed to Samsung’s overwhelming first-place ranking in the domestic market,”  
28 (MTC at 13), and that he was involved in strategy regarding Samsung’s cell phones. (*See id.*)

1 Similarly, Apple claims that Mr. Cho’s deposition is necessary because he “led software  
2 development for Galaxy S and Galaxy Tab products” and “communicated with other Samsung  
3 employees about comparisons between Samsung and Apple products.” (*Id.*) These officials,  
4 however, had little or no direct involvement in the design or development of the products at issue.  
5 SEC’s R&D teams are responsible for developing dozens, if not hundreds, of products. The mere  
6 fact that some of those lower level employees who indirectly report to these executives were  
7 involved in the development of the products at issue does not demonstrate that these executives  
8 have unique, non-repetitive knowledge. *See* MPO at 14-15.

9 Apple’s decision to seek depositions of Samsung’s highest-ranking R&D executives is  
10 especially unwarranted given Apple’s decision to cancel the depositions of lower-level employees

11 [REDACTED]  
12 [REDACTED] (Lee Decl. ¶ 12.) Accordingly, as even Apple  
13 has argued, *see Affinity Labs*, 2011 WL 1753982, at \* 6-7, where, as here, a party has not  
14 exhausted less intrusive means of discovery from lower-level employees, such apex depositions  
15 must be precluded. *See Groupion, LLC*, 2012 WL 359699, at \*4; *First Nat’l Mortgage Co.*, 2007  
16 U.S. Dist. LEXIS 88625, at \*6–7.

17 **E. CEO Dale Sohn And CFO Joseph Cheong Have No Unique, Personal**  
18 **Knowledge That Cannot Be Obtained Through Other Means.**

19 Apple claims that it is entitled to seek the depositions of two executives it alleges are  
20 knowledgeable about Apple’s damages claims, STA’s Chief Executive Officer, Dale Sohn, and  
21 Chief Financial Officer, Joseph Cheong. (*See* MTC at 14; Declaration of Dale Sohn (in Support  
22 of PO) (“Sohn Decl.”) ¶ 2; Declaration of Joseph Cheong (in Support of PO) (“Cheong Decl.”)  
23 ¶ 2.) This assertion lacks merit.

24 [REDACTED]  
25 [REDACTED]

26 [REDACTED] With respect to Mr. Cheong, Apple claims that he is “chiefly  
27 responsible for STA’s revenue and profit contributions to SEC’s financial performance,” and  
28 “signs STA’s financial statements and submits them to headquarters in Korea...” (MTC at 15).

1 As with CEO Choi, a deposition is not warranted simply because CEO Sohn allegedly made high-  
2 level decisions. Nor is Mr. Cheong's deposition warranted based on being the ultimate signatory  
3 on STA's financial documents. Apple has failed once again to demonstrate any *unique* knowledge  
4 these witnesses may have.

5 Even if, as Apple asserts, Mr. Cheong has "unique knowledge of the financial position,  
6 profitability, and operations of STA in relation to SEC," (*id.*), that does not mean he has unique  
7 knowledge of the particular design, development or marketing of the disputed products at the core  
8 of this dispute. Indeed, Apple's theory that financial executives with information related to "sales,  
9 sales strategies, projections, marketing plans, and profits," (MTC at 14), are appropriate deposition  
10 targets would subject virtually all senior financial officers to depositions merely because they have  
11 knowledge of corporate financial information. Surely, the apex doctrine does not permit such an  
12 uncabined erosion of its protections.

13 In any case, Apple has already deposed a number of STA employees who had superior  
14 personal knowledge of the Samsung products and STA's finances, and has not demonstrated how  
15 those individuals failed to provide the information sought. (Lee Decl. ¶ 6; Martin Decl. ¶ 4.)

16 **F. Jaewan Chi Has No Unique, Personal Knowledge That Cannot Be Obtained**  
17 **Through Other Means.**

18 Apple also improperly seeks to depose Jaewan Chi, Executive Vice President of  
19 Samsung's Licensing team. Apple claims it needs to depose Mr. Chi as to two topics – ETSI and  
20 licensing issues, (see MTC at 18-19) – but neither topic justifies these depositions. [REDACTED]

21 [REDACTED]

22 [REDACTED] Additionally, as explained in  
23 Samsung's MPO, Apple has already deposed lower level executives who are more knowledgeable  
24 about these issues. (MPO at 16-17.)

25 Furthermore, though it believes that they do not possess any knowledge relevant to this  
26 action, in an effort to further compromise pursuant to this Court's February 21, 2012 Order,  
27 Samsung has withdrawn its apex objections to the depositions of four other high-ranking  
28 executives in the Intellectual Property Center – Seungho Ahn, head of the IP Center and Licensing

1 Team; Senior Vice Presidents Seung Gun Park and Minhyung Chung, and Vice President and  
2 General Counsel Kenneth Korea. As such, Apple cannot show that Mr. Chi has unique personal  
3 knowledge on those topics that cannot be obtained through these other depositions.

4 **II. SAMSUNG HAS NOT IMPEDED APPLE’S EFFORTS TO DEPOSE LOWER**  
5 **LEVEL EMPLOYEES AND 30(B)(6) WITNESSES.**

6 Contrary to Apple’s assertions, Samsung has provided Apple with more than sufficient  
7 information from the persons most knowledgeable about the facts and circumstances related to this  
8 case. There is no basis to Apple’s claim that the Samsung employees it has deposed were evasive  
9 (*see* MTC at 20-23.) These employees answered all of the questions they were asked based on the  
10 extent of their personal knowledge, subject to counsel's objections. That some of these employees  
11 declined to speculate about information for which they lacked direct knowledge, or sought  
12 clarifications to vague or amorphous questions or terms (*see* MTC at 21), does not mean that they  
13 “stymied Apple’s efforts to pursue less intrusive discovery methods.” (*Id.*) Rather, they merely  
14 sought to ensure that they were clear about what Apple was asking, and then answered responsibly  
15 to the extent of their knowledge.

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 [REDACTED] In addition, since some of Apple’s  
21 questions, such as whether the design and external appearance of the Samsung and Apple  
22 smartphones were similar, (*see* MTC at 21), involved questions for the judge or jury, employees  
23 such as senior designer Jangil Song, appropriately declined to answer. Moreover, Apple can  
24 hardly be heard on this issue, as its own witness have claimed ignorance during deposition  
25 regarding the meaning of words like "rectangle" and "feature." (*See* Declaration of Brett Arnold  
26 in Support of Samsung’s Opposition to Apple’s Motion for a Protective Order (Dkt. 340b) ¶ 16.)

27 Apple’s complaints about answers to pricing questions are likewise off-base. Apple argues  
28 that Samsung witnesses failed to provide detailed responses about the pricing of entry-level iPads

1 and Galaxy Tabs, (*see id.* at 22), and “whether the external look of the iPhone drives its  
2 commercial success.” (*Id.*) But Apple’s frustration with the answers it received does not provide a  
3 basis for turning to depositions of higher-level officials. Apple offers no basis to conclude that the  
4 senior executives in question would have unique knowledge on product pricing that those directly  
5 responsible for pricing do not have.<sup>6</sup>

6 Finally, Apple points to testimony from Samsung witnesses that the apex officials Apple  
7 seeks to depose “were either the final authority on a matter, or were involved in the decision-  
8 making process.” (*Id.*) But this testimony just states the obvious: *of course*, apex witnesses wield  
9 authority – that is precisely what makes them senior officials protected by the apex doctrine. But  
10 the fact that Samsung’s CEO, President or Division Head has ultimate authority over products, or  
11 participates in corporate business decisions, does not establish that they have particularized,  
12 unique knowledge about the fact issues in this dispute – a prerequisite for their deposition. *See*  
13 *supra* at 8-9.<sup>7</sup>

14 Moreover, in addition to the individual witnesses discussed *supra*, Apple has already  
15 served notices under FRCP Rule 30(b)(6) covering roughly 250 topics and subtopics. (Kassabian  
16 Decl. ¶ 2.) To date, Samsung has offered witnesses on most of these topics and subtopics (subject  
17 to its objections), and is working quickly to identify and schedule the remaining designees.<sup>8</sup>

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19 <sup>6</sup> It is also unclear how the question posed to Omar Khan – whether the iPhone’s look “drives  
20 its commercial success” – is “critically relevant,” (*id.*), to the issues in this dispute; if anything, it  
relates to a damages issue that is better left to expert opinion, not fact testimony.

21 <sup>7</sup> The case law on which Apple relies, (*see* MTC at 22-23), is not to the contrary. (*See*  
22 MTC at 22-23). In both *Oracle America Inc. v. Google, Inc.*, 2011 U.S. Dist. LEXIS 79465 (N.D.  
23 Cal., July 21, 2011), and *In re Chase Bank, USA*, 2011 U.S. Dist. LEXIS 127259 (N.D. Cal., Nov.  
24 3, 2011), the court found that the executives at issue actually had unique knowledge; and the party  
seeking the deposition had actually exhausted less burdensome means of discovery. Apple has  
made no such showing here.

25 <sup>8</sup> Apple’s claim that Samsung has “only designated four 30(b)(6) witnesses to date,” (MTC at  
26 21), is inaccurate. Samsung has designated 21 30(b)(6) witnesses covering approximately 160  
27 topics and subtopics to date. Samsung has designated SEC employees Seongwoo Kim, Sungho  
28 Choi and Junwon Lee to testify regarding topics related to licensing and participation in standards-  
bodies; SEC employees Minsuk Kim and Yunjung Lee to testify regarding topics relating to the  
design of the accused products; SEC employees Heonseok Lee, Kiwon Lee, Sung Hee Hwang,  
(footnote continued)

1 (Martin Decl. ¶ 4.) Samsung is not refusing to provide these depositions – which moot any  
2 possible basis for the apex depositions Apple now demands.

3 **III. APPLE’S MOTION SHOULD BE DENIED FOR THE ADDITIONAL REASON**  
4 **THAT APPLE HAS FAILED TO PROPERLY MEET AND CONFER.**

5 As demonstrated above, despite Samsung’s repeated overtures, Apple has failed to  
6 meaningfully meet and confer regarding apex issues. Samsung has made concession after  
7 concession, whittling down its apex objections from 23, to 17, to 14, to 10, to 9 – yet Apple has  
8 remained steadfast in its original position, refusing to drop even a single apex deposition notice.  
9 Its belated offer on March 2 to drop a single apex executive in exchange for Samsung dropping a  
10 critical non-apex witness relevant to the world clock feature is as unreasonable as it is tardy.  
11 Apple’s staunch refusal to compromise, even in the face of this Court’s express directives to do so,  
12 should not be rewarded, and its Motion to Compel should be denied.

13 **CONCLUSION**

14 For the reasons stated, Samsung asks that this Court deny Apple’s Motion to Compel.  
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23 Han-Soo Jung, Joon-Il Choi, Woogyun Kho, Ioi Lam, and Dooju Byun to testify regarding topics  
24 related to the technical development of allegedly infringing product features; SEC employee Oh  
25 Chae Kwon and STA employees Todd Pendleton and Tim Benner to testify regarding topics  
26 related to consumer research and the marketing of the accused products; Tim Sheppard (STA’s  
27 Vice President of Finance and Accounting), Justin Denison (STA’s Chief Strategy Officer), and  
28 Jae-Hwan Sim (Vice president of SEC's Business Operations Group) to testify regarding topics  
relating to financials and business planning; and SEC employee GiSang Lee to testify regarding  
topics relating to the Samsung patents-in-suit and the technology disclosed in the '055 and '871  
Patents. (Martin Decl. ¶ 4.)

1 DATED: March 5, 2012

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