

Exhibit D

February 26, 2012

Writer's Direct Contact
650.813.5718
MPernick@mofocom

By Email (rachelkassabian@quinnemanuel.com)

Rachel Herrick Kassabian
Quinn Emanuel
555 Twin Dolphin Drive, Fifth Floor
Redwood Shores, CA 94065

Re: *Apple v. Samsung*, Case No. 11-cv-1846-LHK (PSG) (N.D. Cal.)

Dear Rachel:

During the lead counsel meet-and-confer sessions that we held on February 14-15, 2012, the parties discussed how to handle Samsung's failure to produce all of the source code required by the Court's December 22, 2011 Order. We in particular discussed reaching a stipulation as to versions of the accused products for which Samsung had not yet produced source code.

Your February 14th letter set out a list of accused products for which Samsung represented that any versions for which it had not yet produced source code did not—except with regard to U.S. Patent No. 7,469,381—materially differ from the version for which Samsung had produced source code. You also stated in our meetings (as reflected in your February 14th letter) that Samsung would continue to investigate this issue, and would report back to us on whether additional accused products could be added to that list. We expected to hear from you on this issue by last Wednesday, February 22nd. We have not, however, received any further information from you.

For purposes of moving this discussion along, I attach here a draft stipulation for Samsung's consideration. As you will see, the current draft includes the accused products mentioned in your February 14th letter. I have also left blank spaces to account for additional products that you are able to add at this point.

We have been very patient on this issue, but the time has come to resolve it. Please review this draft stipulation, and get back to us with any comments by the close of business on February 28, 2012.

Rachel Kassabian
February 26, 2012
Page Two

Sincerely,

/s/ Marc J. Pernick

Marc J. Pernick

cc: Calvin Walden
Peter Kolovos

1 HAROLD J. MCELHINNY (CA SBN 66781)
hmcclhinny@mofo.com
2 MICHAEL A. JACOBS (CA SBN 111664)
mjacobs@mofo.com
3 JENNIFER LEE TAYLOR (CA SBN 161368)
jtaylor@mofo.com
4 ALISON M. TUCHER (CA SBN 171363)
atucher@mofo.com
5 RICHARD S.J. HUNG (CA SBN 197425)
rhung@mofo.com
6 JASON R. BARTLETT (CA SBN 214530)
jasonbartlett@mofo.com
7 MORRISON & FOERSTER LLP
425 Market Street
8 San Francisco, California 94105-2482
Telephone: (415) 268-7000
9 Facsimile: (415) 268-7522

10 Attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.

QUINN EMANUEL URQUHART &
SULLIVAN, LLP
Charles K. Verhoeven (Cal. Bar No.
170151)
50 California Street, 22nd Floor
San Francisco, California 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700
Kevin P.B. Johnson (Cal. Bar No. 177129)
Victoria F. Maroulis (Cal. Bar No. 202603)
555 Twin Dolphin Drive 5th Floor
Redwood Shores, California 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100
Michael T. Zeller (Cal. Bar No. 196417)
865 S. Figueroa St., 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Attorneys for SAMSUNG ELECTRONICS
CO., LTD., SAMSUNG ELECTRONICS
AMERICA, INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA,
LLC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 APPLE INC., a California corporation,

18 Plaintiff,

19 v.

20 SAMSUNG ELECTRONICS CO., LTD., a
21 Korean corporation; SAMSUNG ELECTRONICS
22 AMERICA, INC., a New York corporation; and
23 SAMSUNG TELECOMMUNICATIONS
company,

24 Defendants.

Case No. 11-cv-01846-LHK

**JOINT STIPULATION AND
[PROPOSED] ORDER
REGARDING SOURCE CODE
FOR THE ACCUSED DEVICES**

1 WHEREAS, Apple Inc. (“Apple”) commenced the above-captioned action against
2 Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung
3 Telecommunications America, LLC (collectively “Samsung,” and together with Apple, “the
4 Parties” and individually each a “Party”) on April 15, 2011;

5 WHEREAS, through Requests for Production propounded on Samsung and other
6 discovery mechanisms, Apple sought production of the source code for the accused products (*see*,
7 *e.g.*, Apple RFP Nos. 224, 228, and 232);

8 WHEREAS, on December 8, 2011, Apple filed a motion to compel seeking an order
9 directing Samsung to produce its source code for the accused products, including its source code
10 relating to certain specified accused functions (*see* Apple’s 12/8/11 [Proposed] Order Granting
11 Apple’s Mot. Compel Production of Docs. & Things at 2-3);

12 WHEREAS, on December 22, 2011, the Court issued an order requiring Samsung to
13 produce “the source code and technical documents requested by Apple’s motion” by
14 December 31, 2011 (12/22/11 Order at 2);

15 WHEREAS, Samsung produced only one version of source code for each accused product
16 by December 31, 2011;

17 WHEREAS, Apple contends that Samsung should be precluded from arguing that any
18 version of an accused product does not infringe any Apple patent-in-suit, unless the source code
19 for that version of the product either (i) was produced by December 31, 2011, or (ii) differs in no
20 material way from the source code for the version of the product that was produced by
21 December 31, 2011;

22 WHEREAS, although Samsung does not agree with Apple’s contention, Samsung
23 represents that, for purposes of assessing infringement of all but one of the Apple patents-in-suit,
24 the version of the following accused products for which Samsung did produce source code by
25 December 31, 2011 is representative of all versions of that product:

- 26 (a) Captivate;
- 27 (b) Continuum;
- (c) Epic 4G;
- (d) Exhibit 4G;
- 28 (e) Fascinate;

- 1 (f) Galaxy Ace Showcase;
- 2 (g) Galaxy S 4G;
- 3 (h) Gravity Smart;
- 4 (i) Indulge;
- 5 (j) Intercept;
- 6 (k) Mesmerize;
- 7 (l) Nexus;
- 8 (m) Nexus S;
- 9 (n) Nexus S 4G;
- 10 (o) Replenish;
- 11 (p) Showcase Galaxy S;
- 12 (q) Sidekick;
- 13 (r) Transform;
- 14 (s) Vibrant;
- 15 (t) Galaxy Tab (AT&T, Sprint, TMobile and Verizon versions);
- 16 (u)
- 17 (v)
- 18 (w) ...
- 19 (x)

11 WHEREAS, Samsung's representation does not apply to Apple's allegation that
12 Samsung's accused products infringe U.S. Patent No. 7,469,381; and

13 WHEREAS, the Parties have determined that it is in their mutual interest to memorialize
14 their partial resolution of this outstanding dispute regarding the consequences of Samsung's
15 failure to produce all of the source code covered by the Court's December 22, 2011 Order by
16 December 31, 2011.

17 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties as
18 follows:

19 1. For purposes of assessing infringement of U.S. Patent Nos. 6,493,002, 7,853,891,
20 7,864,163, 7,844,915, 7,812,828, 7,663,607, and 7,920,129 (whether direct or indirect, and
21 whether literal or by equivalents), the version of source code that Samsung produced by
22 December 31, 2011 for the following products is representative of the source code for all versions
23 of that product:

- 24 a. Captivate;
- 25 b. Continuum;
- 26 c. Epic 4G;
- 27 d. Exhibit 4G;
- 28 e. Fascinate;
- f. Galaxy Ace Showcase;
- g. Galaxy S 4G;
- h. Gravity Smart;
- i. Indulge;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- j. Intercept;
- k. Mesmerize;
- l. Nexus;
- m. Nexus S;
- n. Nexus S 4G;
- o. Replenish;
- p. Showcase Galaxy S;
- q. Sidekick;
- r. Transform;
- s. Vibrant; and
- t. Galaxy Tab (AT&T, Sprint, TMobile and Verizon versions);
- u.
- v.
- w.
- x.

2. This stipulation is without prejudice to Apple’s right to seek any remedy or relief with regard to any disputes over Samsung’s production of source code in accordance with the December 22, 2011 Order that are not addressed in Section 1 of this Stipulation.

Dated: February __, 2012

MORRISON & FOERSTER LLP

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: _____
 HAROLD J. MCELHINNY
 MICHAEL A. JACOBS
 JENNIFER LEE TAYLOR
 ALISON M. TUCHER
 RICHARD S.J. HUNG
 JASON R. BARTLETT

By: _____
 CHARLES K. VERHOEVEN
 KEVIN P.B. JOHNSON
 VICTORIA F. MAROULIS
 EDWARD DEFRANCO
 MICHAEL T. ZELLER

Attorneys for Plaintiff
 APPLE INC.

Attorneys for SAMSUNG ELECTRONICS CO. LTD, SAMSUNG ELECTRONICS AMERICA, INC., AND SAMSUNG TELECOMMUNICATIONS AMERICA, LLC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2012

By: _____
The Honorable Lucy H. Koh
United States District Court Judge