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**From:** Todd Briggs  
**Sent:** Thursday, March 15, 2012 11:55 AM  
**To:** Pernick, Marc J.; Rachel Herrick Kassabian  
**Cc:** AppleMoFo; Samsung v. Apple; calvin.walden@wilmerhale.com; peter.kolovos@wilmerhale.com; Mazza, Mia; WHAppleSamsungNDCalService@wilmerhale.com  
**Subject:** RE: Apple v. Samsung: Correspondence re: Production of Source Code by Samsung  
**Attachments:** 4655502\_1\_Samsung Source Code Stipulation.DOC

Marc,

We have been working on the source code stipulation and have attached a new draft for your review. If you would like to discuss or have any questions, please feel free to give me a call.

Thanks, Todd

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**From:** Pernick, Marc J. [<mailto:MPernick@mofo.com>]  
**Sent:** Sunday, February 26, 2012 9:47 PM  
**To:** Rachel Herrick Kassabian  
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**Subject:** Apple v. Samsung: Correspondence re: Production of Source Code by Samsung

<<2012--2-26 Pernick to Kassabian re Stipulation on Source Code.pdf>> <<2012-02-26 Pernick to Kassabian re Stipulation on Source Code.pdf>>

Hi Rachel,

Attached please find correspondence regarding Samsung's production of source code in response to the Court's December 22, 2011 Order, as well as a draft stipulation for your review.

Regards,  
Marc Pernick

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# **EXHIBIT 1**

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TELECOMMUNICATIONS AMERICA,  
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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

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

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

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

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

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

16 WHEREAS, on December 31, 2011, Samsung Electronics Co., Samsung Electronics  
17 America, Inc. and Samsung Telecommunications America, LLC (“Samsung”) produced source  
18 code for each of the Samsung accused products in this lawsuit;

19 WHEREAS, on January 11, 2012, Apple filed a Motion to Compel seeking documents  
20 sufficient to show the version histories, updates, and changes made to the source code affecting  
21 accused functionalities;

22 WHEREAS, on January 27, 2012, the Court issued an order permitting Samsung to either  
23 produce the additional source code information or negotiate a stipulation that its production is  
24 representative of the functionality of the accused products;

25 WHEREAS the parties met and conferred regarding the production of such source code or  
26 an entry of a stipulation regarding modifications to the accused functionalities;

27 WHEREAS, the Parties have determined that it is in their mutual interest to memorialize  
28 their resolution of this outstanding dispute.

1  
2 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties as  
3 follows:

4 1. This Stipulation and the information it contains shall be used only in the instant  
5 Action, shall not be binding on any party for any other purposes or in any other administrative or  
6 judicial proceeding, and shall not be used for any other purposes, including as evidence, in any  
7 such other proceeding.

8 2. Nothing in this Stipulation shall be construed as an admission that any of  
9 Samsung's products infringe any claim element of any claim of the patents at issue in this  
10 Investigation.

11 3. Nothing in this Stipulation shall be construed as an admission of validity or  
12 enforceability of any claim of any of the patents at issue in this Action.

13 4. This Stipulation is limited to Samsung products imported and sold in the United  
14 States before March 15, 2011.

15 5. For purposes of this lawsuit for assessing infringement of U.S. Patent  
16 Nos. 6,493,002, 7,844,915, and 7,812,828, (whether direct or indirect, and whether literal or by  
17 equivalents), the version of source code that Samsung produced by December 31, 2011 relating to  
18 the functionalities accused of infringing these patents is representative of the source code for all  
19 versions of that product released to date.

20 6. For purposes of this lawsuit for assessing infringement of U.S. Patent  
21 Nos. 7,469,381, (whether direct or indirect, and whether literal or by equivalents), the version of  
22 source code that Samsung produced by December 31, 2011 relating to the functionalities accused  
23 of infringing this patent is representative of the source code for all versions of that product  
24 released in the United States before approximately August 12, 2011. The version of source code  
25 produced on January 23, 2012 is representative of versions of that product released after  
26 approximately August 12, 2011.

27 7. For purposes of this lawsuit for assessing infringement of U.S. Patent  
28 Nos. 7,853,891, (whether direct or indirect, and whether literal or by equivalents), the version of  
source code that Samsung produced by December 31, 2011 relating to the functionalities accused

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of infringing this patent is representative of the source code for all versions of that product released in the United States before approximately December 23, 2011. The version of source code produced on March 10, 2012 is representative of versions of that product released after approximately December 23, 2011.

8. For purposes of this lawsuit for assessing infringement of U.S. Patent Nos. 7,864,163 (whether direct or indirect, and whether literal or by equivalents), the version of source code that Samsung produced by December 31, 2011 relating to the functionalities accused of infringing this patent is representative of the source code for all versions of that product released in the United States before approximately December 23, 2011. The version of source code produced on March 12, 2012 is representative of versions of that product released after approximately December 23, 2011.

9. This stipulation is without prejudice to Samsung's right to modify its source code and products at a later time, including the development of design-arounds to the patents in dispute, and does not constitute a stipulation that the December 31, 2011 code is representative of such later-developed source code and products.

10. 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 this Stipulation.

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Dated: March \_\_\_, 2012

MORRISON & FOERSTER LLP

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SULLIVAN, LLP

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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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

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