

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC.,	)	Case No.: C 11-cv-1846 LHK (PSG)
	)	
Plaintiff,	)	<b>ORDER GRANTING-IN-PART</b>
v.	)	<b>PLAINTIFF’S MOTION TO COMPEL</b>
	)	<b>DEPOSITIONS, AND GRANTING-IN-</b>
SAMSUNG ELECTRONICS CO., LTD, a	)	<b>PART DEFENDANT’S CROSS-</b>
Korean corporation; SAMSUNG	)	<b>MOTION FOR A PROTECTIVE</b>
ELECTRONICS AMERICA, INC., a New York	)	<b>ORDER</b>
corporation; and SAMSUNG	)	
TELECOMMUNICATIONS AMERICA, LLC,	)	<b>(Re: Docket Nos. 736, 754)</b>
a Delaware limited liability company,	)	
Defendants.	)	

In this patent infringement action, Plaintiff Apple Inc. (“Apple”) moves to compel Defendants and counter-claimants Samsung Electronics Co., LTD, Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively “Samsung”) to produce six witnesses for depositions.<sup>1</sup> Samsung cross-moves for a protective order to prevent the depositions.<sup>2</sup> On March 27, 2017, the parties appeared for hearing. Having considered the argument and evidence presented, the court hereby GRANTS Apple’s motion to compel, but only in PART. The court also GRANTS-IN-PART Samsung’s motion for a protective order.

<sup>1</sup> Docket No. 736 (Pl.’s Mot. to Compel Depositions of 14 of Samsung’s Purported Apex Witnesses).

<sup>2</sup> Docket No. 754 (Def.’s Mot. for Protective Order).



1 directed other employees to consider and compare Apple products when designing or re-designing  
2 the accused products or features. The STA witnesses are personally knowledgeable of or  
3 responsible for development, marketing, and finance decisions relating to the U.S. market for the  
4 accused products. Because Samsung has not produced any discovery from these witnesses, all of  
5 the evidence it relies upon has been pieced together from other witness sources. There are no  
6 extraordinary circumstances or burdens that should prevent Apple from taking the depositions.

7 Samsung responds that these six witnesses hold the title of Executive Vice President or  
8 higher, oversee at a minimum entire groups or divisions of employees, and have only high-level  
9 knowledge far removed from the facts at issue in the case. Apple has not demonstrated that the  
10 information it seeks is unique, first-hand, and non-repetitive, principally because Apple has failed  
11 to obtain this information through other less burdensome means.

## 12 II. LEGAL STANDARDS

13 Under Rule 26(c)(1) of the Federal Rules of Civil Procedure, “[t]he court may, for good  
14 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or  
15 undue burden or expense,”<sup>8</sup> including forbidding a deposition,<sup>9</sup> or limiting its scope.<sup>10</sup> The party  
16 seeking a protective order bears the burden of showing good cause for the order by “demonstrating  
17 harm or prejudice that will result from the discovery.”<sup>11</sup> When a party seeks the deposition of a  
18 high-level executive (a so-called “apex” deposition), courts have “observed that such discovery  
19 creates a tremendous potential for abuse or harassment.”<sup>12</sup> The court therefore has discretion to  
20 limit discovery where the discovery sought “can be obtained from some other source that is more  
21 convenient, less burdensome, or less expensive.”<sup>13</sup>

22 <sup>8</sup> Fed. R. Civ. P. 26(c)(1).

23 <sup>9</sup> See Fed. R. Civ. P. 26(c)(1)(A).

24 <sup>10</sup> See Fed. R. Civ. P. 26(c)(1)(B).

25 <sup>11</sup> *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004).

26 <sup>12</sup> *Celerity, Inc. v. Ultra Clean Holding, Inc.*, C 05-4374MMC(JL), 2007 WL 205067, at \*3 (N.D.  
27 Cal. Jan. 25, 2007). See also *Mulvey v. Chrysler Corp.*, 106 F.R.D. 364 (D.R.I. 1985).

28 <sup>13</sup> Fed. R. Civ. P. 26(b)(2)(C)(i).



1 designation as applied to multiple executives does not itself become a tool for evading otherwise  
2 relevant and permissible discovery, the court must assess not only the materiality of the proposed  
3 deponent’s knowledge of pertinent facts and the availability of other means for the party to access  
4 that knowledge, but – with apologies – the person’s degree of “apex-ness” in relation to these  
5 factors. On the proverbial sliding scale, the closer that a proposed witness is to the apex of some  
6 particular peak in the corporate mountain range, and the less directly relevant that person is to the  
7 evidence proffered in support of his deposition, the more appropriate the protections of the apex  
8 doctrine become.

9           It is thus Samsung’s burden to demonstrate that each “apex” witness is so entitled to that  
10 designation, and where less entitled, is even further removed from having personal, non-repetitive  
11 knowledge of discoverable information. Although not expressly set forth in its papers, at oral  
12 argument Apple did not concede the apex status of the witnesses at issue, other than Samsung’s  
13 Chief Executive Officer, Gee Sung Choi.<sup>19</sup> The court therefore looks first to the relative position of  
14 the proposed witness in the company and within his sub-organization, second to the materiality and  
15 uniqueness of the witness’ likely knowledge, and third to the availability or exhaustion of other less  
16 burdensome discovery methods. Because many of the facts supporting each party’s position may  
17 be subject to sealing, the court will provide only a high-level summary of the evidence offered,  
18 notwithstanding the detailed investigation that it has undertaken with respect to each witness at  
19 issue.

20           **A. SEC Chief Executive Officer – Gee Sung Choi**

21           Apple seeks to compel the deposition of Choi by arguing that he has been deeply involved  
22 in directing Samsung’s employee to make Samsung products more like Apple’s products. To show  
23 Choi’s unique, first-hand knowledge regarding Samsung’s purported strategy of considering  
24 Apple’s products when creating new Samsung products, Apple offers two categories of documents.  
25 The first category consists of emails and meeting minutes authored by other Samsung employees

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27 <sup>19</sup> In its opening brief, Apple argues generally that Samsung uses mere labels to “paint[] with far  
28 too broad a brush” an “apex” objection onto far more witnesses than merit the special protections  
afforded by the doctrine. *See* Docket No. 736 at 7.

1 that indicate Choi presided over meetings or discussions involving, for example, “product  
2 competitiveness against i-PAD2” and resulting design changes for Samsung’s own tablet product,<sup>20</sup>  
3 or that summarize statements or directives attributed to Choi that reference the need to evaluate  
4 Samsung’s high-end products against Apple’s and thereby develop products that are more  
5 competitive.<sup>21</sup> The second category consists of documents from 2007 – shortly after Apple’s  
6 release of the iPhone and before Samsung launched its Galaxy line of products – that were  
7 developed and approved by Samsung’s “Design Management Center” of which Choi was the head  
8 at the time. The proffered document outlines a strategy that Apple contends mimics its own,  
9 renowned strategy for customer experience, as well as directly cites Apple products.<sup>22</sup> Apple  
10 argues that it has tried to obtain information pertaining to these strategy documents from lower-  
11 level employees with no success.<sup>23</sup>

12 Samsung responds that Apple seeks to depose Choi based on nothing more than his current  
13 title as CEO and former title of President of SEC’s Telecommunications Network Business in  
14 2007, and on comments attributed to him by others, many regarding the need to improve Samsung  
15 products not at issue in this case. Samsung argues that Apple has produced no evidence indicating  
16 Choi was involved in the creation or implementation of the strategy documents touted by Apple.  
17 Instead, the documents merely show that Samsung was at the top of the relevant corporate  
18 hierarchy.<sup>24</sup> Samsung further argues that Apple failed to acknowledge the statements of Samsung’s  
19 30(b)(6) designee, Yunjung Lee, who already explained that the strategy about which Apple seeks  
20 to depose Choi did not influence the development of the accused products and features.<sup>25</sup>

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22 <sup>20</sup> See, e.g., Docket No. 736, Ex. 3 (Mazza Decl.), Exs. 11, 12 (under seal).

23 <sup>21</sup> See, e.g., Mazza Decl. Exs. 8, 10 (under seal).

24 <sup>22</sup> See *id.*, Ex. 6 (under seal).

25 <sup>23</sup> See *id.*, Ex. 6 at 45-52, Ex. 7 at 101-04, Ex. 40 at 89-91 (under seal).

26 <sup>24</sup> See Docket No. 799, Ex. 6 at 41 (Depo. Tr. Seoguen Kim) (under seal).

27 <sup>25</sup> See Docket No. 819, Ex. 4 (Kassabian Reply Decl.), Ex. B at 33-38 (Depo. Tr. Yunjung Lee)  
28 (under seal).

1 Choi's position as CEO of Samsung Electronics Company does not automatically shield his  
2 deposition.<sup>26</sup> In *In re Google*, this court ordered the limited deposition of the defendant's CEO after  
3 the plaintiff showed that he had unique knowledge of facts that could not be secured by other less  
4 intrusive means of discovery.<sup>27</sup> Specifically, the CEO was a named inventor on several patents, he  
5 was one of a few employees at Google during at the time of hypothetical negotiations of the patents  
6 at issue, and he had direct knowledge of the patent search industry.<sup>28</sup> In light of the evidence  
7 proffered by Apple that Choi was at the head of a strategic shift in Samsung's design mentality at  
8 precisely the time that certain accused products were being developed, the court is similarly  
9 persuaded that Choi may have engaged in "the type of hands-on action which demonstrates the  
10 unique personal knowledge required to compel a deposition of a CEO."<sup>29</sup> Although Samsung is  
11 correct that holding rank at the top of the relevant hierarchy is not enough, Apple has set forth  
12 additional bases that warrant discovery into Choi's role in developing the policies or strategies  
13 identified as suspect by Apple.<sup>30</sup>

14 Because Choi represents the quintessential "apex," however, Apple's proffer of evidence  
15 suggesting unique knowledge is insufficient to warrant unrestricted deposition time and subject  
16 matter. The court therefore GRANTS Apple's motion to compel Choi's deposition, subject to the  
17 following limitations. Apple may depose Choi for no more than two hours.<sup>31</sup>

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<sup>26</sup> See *In re Google Litig.*, 2011 U.S. Dist. LEXIS 120905 at \*11.

20 <sup>27</sup> See *id.*

21 <sup>28</sup> See *id.* at \*8-9.

22 <sup>29</sup> See *Doble v. Mega Life & Health Ins. Co.*, C 09-1611 CRB (JL), 2010 WL 1998904, at \*3 (N.D.  
23 Cal. May 18, 2010).

24 <sup>30</sup> Cf. *Kennedy v. Jackson Nat'l Life Ins. Co.*, 2010 U.S. Dist. LEXIS 47866, at \*7-8 (N.D. Cal.  
25 Apr. 22, 2010) (court allowed deposition of CEO because he was the main decision maker in  
26 numerous relevant, discrete areas of the company).

27 <sup>31</sup> The hours of deposition are subject to the agreement of the parties regarding the calculation of  
28 deposition time for translated depositions. See, e.g., Docket No. 683 ¶ 16 (Mazza Decl. in Support  
of Pl.'s Mot. to Compel).





1 those employees who authored the emails offered in support of Apple’s motion. For example,  
2 Samsung points out that the report relied upon by Apple suggests only high-level comments by  
3 Shin regarding the need to measure against the “global denominator,” and that Apple failed to  
4 question the report’s author on the meaning of the comments in the report during his deposition.<sup>37</sup>

5 With respect to this lawsuit, Shin inhabits a key, high-level position for which Apple’s  
6 showing of unique knowledge and exhaustion of other means of obtaining discovery is insufficient.  
7 The court is not persuaded that Shin has unique, first-hand knowledge that implicates anything  
8 beyond the statements of a business executive voicing Samsung’s need to remain competitive and  
9 to plan its designs accordingly.<sup>38</sup> Unlike the overarching, “copycat” strategy that Apple offers  
10 evidence to suggest Choi may have had a direct hand in authoring, the evidence cited by Apple  
11 does not demonstrate a personal role or strategic design decision that Shin orchestrated or even  
12 approved. The court therefore DENIES Apple’s motion to compel Shin’s deposition, and GRANTS  
13 Samsung’s cross-motion for a protective order.

14 **C. Executive Vice President of SEC Mobile Division’s Product Strategy Team –**  
15 **Won-Pyo Hong**

16 Apple argues that as the head of the product strategy team, Hong has both the knowledge  
17 about Samsung’s strategy behind design decisions and the authority to carry out those directives,  
18 particularly the consideration and copying of Apple’s products. Apple proffers an email chain with  
19 an email from Hong his team to present product designs alongside Apple designs of a similar or  
20 corresponding product in order to engage in a “compare and contrast.”<sup>39</sup> Apple argues that Hong  
21 was likely responsible for a design study that opined on the successful design of the iPhone,<sup>40</sup> and

22 <sup>37</sup> See *id.*, Ex. 7 at 74-77 (under seal).

23 <sup>38</sup> Cf. *Affinity Labs of Texas v. Apple, Inc.*, C 09-4436 CW JL, 2011 WL 1753982, at \*15 (N.D.  
24 Cal. May 9, 2011) (the fact that the witness is a CEO by itself is insufficient to justify taking his  
25 deposition); *Groupion, LLC v. Groupon, Inc.*, 11-0870 MEJ, 2012 WL 359699, at \*3 (N.D. Cal.  
26 Feb. 2, 2012) (denying opportunity to depose CEO and other apex witnesses because evidence that  
27 30(b)(6) witness had not verified his information with them was insufficient to demonstrate their  
28 unique, non-repetitive, firsthand knowledge).

<sup>39</sup> See Mazza Decl., Ex. 22 (under seal).

<sup>40</sup> See Mazza Reply Decl., Ex. 19 (under seal).

1 that other deponents have confirmed that Hong made the “final decision” with respect to new  
2 product proposals, including for the Galaxy Tab 10.1.<sup>41</sup> Apple argues that the testimony of  
3 Samsung’s 30(b)(6) witness, Senior VP Dong Hoon Chang, regarding the same study and  
4 Samsung’s position regarding the iPhone<sup>42</sup> directly conflicts with statements in the study created  
5 by Hong’s team. Apple seeks to depose Hong to get a more accurate picture of Samsung’s design  
6 strategy in relation to Apple’s products.

7 Samsung argues that Hong is one of the highest ranking executives in the Mobile  
8 Communication Division, overseeing approximately 800 employees. Samsung contends that Apple  
9 has not traced any unique personal knowledge to Hong that Apple cannot obtain from other  
10 employees. With regard to the referenced design study, Samsung contends that Apple failed to ask  
11 Chang – the witness whom Samsung had identified to be most knowledgeable – about the  
12 purported discrepancy between his statements and the study itself. Samsung further contends that  
13 Apple has exhaustively deposed eighteen lower-level employees, three vice presidents, and a senior  
14 vice president who were involved with the day-to-day design and development of the products at  
15 issue, including Samsung’s designated 30(b)(6) witnesses on topics related to the Product Strategy  
16 Team’s activities. Samsung argues that Apple has not shown why these depositions are insufficient  
17 or how Hong will provide additional, unique information.

18 Apple largely relies on the design study created by Hong’s team and on his placement as  
19 the head of product strategy. Apple’s failure to introduce evidence that Hong actually created or  
20 oversaw the study or particular decisions is tempered by the fact that he was named multiple times  
21 during other’s deposition as responsible. In addition, Samsung fails to address the significance of  
22 the email evidence in which Hong directly orders side-by-side comparisons of Apple and Samsung  
23 products for design presentations. This suggests at least one area in which Hong is has unique,  
24 firsthand knowledge (of his own intent and meaning in issuing such a directive) that cannot be  
25 supplied by other means. Because Samsung has not identified any particular burden to Hong, other

26 \_\_\_\_\_  
27 <sup>41</sup> See *id.*, Ex. 7 at 124-25, 136-37, 148-51, 154-55 (under seal).

28 <sup>42</sup> See *id.*, Ex. 40 at 88.

1 than his position as one of the highest-ranking executives in the Mobile Communications Division  
2 and responsible for overseeing nine groups, each managed by a senior vice president or vice  
3 president, the court finds that limited deposition time with Hong is warranted. Accordingly, the  
4 court GRANTS Apple’s motion to compel Hong’s deposition, which may last for no more than  
5 three hours.

6 **D. Senior Vice President of Advanced R&D – Seunghwan Cho**

7 Apple argues that Cho led software development for the accused Galaxy S and Galaxy Tab  
8 products and “oversaw the development of features that Apple contends infringe its utility patents.”  
9 Apple points to a series of emails in which Cho explained that the user experience of another  
10 Samsung product not at issue in this case was deficient compared to the iPhone,<sup>43</sup> and another in  
11 which he ordered improvements in graphic user interface usability.<sup>44</sup> In one email thread, Cho  
12 requests input from the designers regarding Samsung’s efforts to develop animation effects that he  
13 identifies as a key difference between the Galaxy Tab and iPad.<sup>45</sup> The response to Cho includes a  
14 detailed checklist of various graphical user interfaces, including accused features, while providing  
15 detailed feedback on user experience designs and models. Apple points to another email in the  
16 thread – in which Cho remarks that the Galaxy Tab is inferior in certain effects and aspects  
17 compared to the iPad – as evidence of Cho’s having provided firsthand his opinion and directives  
18 concerning features that are likely include many of the accused features at issue in this case.<sup>46</sup>

19 Samsung responds that Cho did not have primary responsibility for the day-to-day decisions  
20 concerning the design of Samsung’s products, especially considering that he has overseen the  
21 development of 75 products in the past year alone. Samsung contends that the entirety of comments  
22 made by Cho in the referenced email chain represent only generalized observations and requests  
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24 <sup>43</sup> See Mazza Decl., Ex. 34 (under seal).

25 <sup>44</sup> See *id.*, Ex. 35 at 4-5 (under seal).

26 <sup>45</sup> See Mazza Reply Decl., Ex. 28 (under seal).

27 <sup>46</sup> See *id.*  
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1 for improvements, as opposed to express or implied directions to copy Apple.<sup>47</sup> Samsung argues  
2 that Apple could have questioned the primary recipient of Cho’s email, Vice President Yong Suk  
3 Moon, during his deposition, but chose not to. Moreover, Samsung points out that Apple already  
4 deposed Vice President SungSik Lee, who gave the specific instructions in the email regarding the  
5 improvements suggested by Cho. Finally, Samsung contends that the deposition of Cho is  
6 unwarranted because Apple canceled depositions of lower-level employees in that division.

7 Samsung opposes largely on the ground that Apple has not exhausted less intrusive  
8 methods of discovery, specifically depositions of lower level employees.<sup>48</sup> However, Apple has  
9 sufficiently shown that Cho was directly involved in reviewing certain Samsung features in relation  
10 to Apple, and seeking detailed feedback from designers.<sup>49</sup> Whether Apple should have questioned  
11 the recipient of Cho’s email as well does not negate the fact that Cho, as the sender, is likely to  
12 have his own unique knowledge of what he intended by his comments and questions. As with  
13 Hong, Samsung further fails to articulate any burden or extraordinary circumstance present –  
14 besides the fact that Cho is an executive vice president who oversees approximately 800 employees  
15 – that would set provide a counter-balance to Apple’s showing. Accordingly, as to Cho, the court  
16 GRANTS Apple’s motion to compel, and DENIES Samsung’s motion for a protective order. Apple  
17 may depose Cho for no more than three hours.

18 **E. President and CEO of Samsung Telecommunications America (“STA”) – Dale Sohn**

19 Apple argues that because sales of the accused products make up more than half of STA’s  
20 sales, STA’s sales strategies, projections, marketing plans, and profits are all relevant to the

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22 <sup>47</sup> See *id.*, Ex. 28 (under seal) (“[s]ince the Galaxy Tab is currently inferior in effect [sic] and  
23 emotional aspects compared to the iPad, please show your interest and give ideas on these aspects  
24 as well”)

24 <sup>48</sup> See *Affinity Labs of Texas*, 2011 WL 1753982, at \*6-7 (the court “required that depositions of  
25 lower-level employees must first be taken to establish whether there was a need to depose high-  
26 level executives”); *Groupion, LLC*, 2012 WL 359699, at \*4 (plaintiff did not show “that it even  
attempted less intrusive means of discovery, such as interrogatories or depositions of lower-ranking  
employees”).

27 <sup>49</sup> See *First United Methodist Church of San Jose v. Atl. Mut. Ins. Co.*, No. C-95-2243 DLJ, 1995  
28 U.S. Dist. LEXIS 22469, at \*8 (N.D. Cal. Sept. 19, 1995).

1 remedies Apple seeks to prove. Apple argues that Sohn is responsible for the U.S. market and has  
2 unique knowledge regarding Samsung’s positioning to infringe Apple’s intellectual property.  
3 Apple argues that Sohn made decisions that contributed directly to the trademark, trade dress, and  
4 patent infringement alleged by Apple. Specifically, Apple refers to a series of emails sent by Sohn  
5 in which he outlines the goals and implementation strategy for a “Beat Apple” campaign.<sup>50</sup> In one  
6 of the emails, Sohn states that he cannot afford the luxury of thinking and talking about the big  
7 things, but instead must focus on the details,<sup>51</sup> which Apple argues demonstrates that Sohn was  
8 immersed in day-to-day decision making. Apple also points to an email thread regarding the  
9 placement of Samsung’s logo on the Galaxy Tab products in which Sohn voices his opinion  
10 regarding the logo placement and requests that such decisions go through STA first.<sup>52</sup> Finally,  
11 Apple argues that it deposed the head of marketing at Samsung Electronics Company Don-Joo Lee,  
12 who stated that he did not know whether Samsung decided to adopt a strategy to have the Galaxy  
13 Tab rival the iPad, but “whoever is responsible in the U.S. market would know best.”<sup>53</sup>

14 Samsung asserts that Sohn oversees over 1,000 employees and three business divisions, and  
15 that his deposition is not warranted simply because he makes high-level decisions. Samsung argues  
16 that Sohn’s knowledge regarding the design, development, and marketing of the relevant products  
17 is based solely on reports received at high-level meetings.<sup>54</sup> Samsung also argues that numerous  
18 lower-level employees have already testified, and Samsung has designed three STA employees as  
19 30(b)(6) witnesses on product design and strategy, market topics, and financial topics. Samsung  
20 argues that Sohn’s deposition will not provide any unique, non-repetitive information. Samsung  
21 further argues that the email stating Sohn was going to “deep dive” into the details only shows his  
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23 <sup>50</sup> See Mazza Decl., Ex. 39 (under seal).

24 <sup>51</sup> See Mazza Reply Decl., Ex. 29 (under seal).

25 <sup>52</sup> See *id.*, Ex. 41 (under seal).

26 <sup>53</sup> See *id.*, Ex. 7 at 36:16-37:6 (under seal).

27 <sup>54</sup> See Docket No. 754, Ex. 10 ¶ 5 (Sohn Decl.).  
28

1 concern regarding STA’s performance, not any action actually taken to dive into design or  
2 marketing-related details.

3 Although Sohn’s communications regarding the “Beat Apple” campaign do not reveal  
4 direct involvement in design decisions related to Apple’s patent infringement claims, they do  
5 reveal responsibility taken for developing and implementing details of the U.S. market approach,  
6 many of which may be relevant to Apple’s trademark claims, as well as to evidence on damages.  
7 This includes Sohn’s directive for decisions regarding such product and marketing issues as logo  
8 placement to go through STA first, before being brought to the Korea headquarters. This indicates  
9 that Sohn is likely to have knowledge that Apple is entitled to explore, especially where another  
10 high-level, U.S. based executive testified that Sohn would be the appropriate person.<sup>55</sup> Although  
11 Sohn’s position as the head of STA does indicate apex status, at least as to STA, Samsung does not  
12 provide further justification for withholding his deposition. The court therefore GRANTS Apple’s  
13 motion to compel the deposition of Sohn, and DENIES Samsung’s cross-motion for a protective  
14 order. Apple may depose Sohn for no more than three hours.

15 **F. Chief Financial Officer of STA – Joseph Cheong**

16 Finally, Apple seeks the deposition of Cheong because has unique knowledge of the  
17 financial position, profitability, and operations of STA in relation to Samsung Electronics  
18 Company. Apple argues that Cheong has the ultimate authority to make decisions that impact  
19 STA’s profitability from the sale of the accused products. Apple further argues that because  
20 Cheong signs the financial statements and submits them to Samsung’s headquarters in Korea, he  
21 takes ultimate responsibility for each statement’s accuracy and contents, and thus is best equipped  
22 to testify about them. Apple points to the “Advanced Pricing Agreement,”<sup>56</sup> signed by Cheong,  
23 which creates a transfer-pricing basis to provide the IRS with a pre-determined minimum income

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25 <sup>55</sup> See *Six West Retail Acquisition, Inc. v. Sony Theatre Mgmt. Corp.*, 203 F.R.D. 98, 103 (S.D.N.Y.  
26 2001); *Kennedy*, 2010 U.S. Dist. LEXIS 47866 at \*7-8 (the court allowed the deposition of the  
27 CEO where other employees testified that the CEO was the person most likely to have the  
28 information).

<sup>56</sup> See Mazza Decl., Ex. 44 (under seal).

1 for STA’s activities. Apple further argues that memorandum to Cheong and emails discussing a  
2 request by Cheong to negotiate a settlement with a wireless carrier show that Cheong was involved  
3 in the daily financial decisions of STA.

4 Samsung asserts the same general objections to Cheong as it did for Sohn – namely that  
5 Cheong does not have any unique, first-hand knowledge as all of his knowledge, and his deposition  
6 is not warranted simply because he makes high-level decisions. Samsung concedes that Cheong  
7 may have unique knowledge regarding the financial relationship between STA and Samsung  
8 Electronics Company, but insists that Cheong does not have unique knowledge of the particular  
9 design, development, or marketing of the disputed products that form the core of the present  
10 dispute. Samsung contends that Apple has already deposed Samsung’s 30(b)(6) damages  
11 designees, and Apple cannot gain any additional, unique information from a potential deposition of  
12 Cheong. Finally, Samsung contends that Apple’s standard would subject virtually all senior  
13 financial officers to depositions merely because they have knowledge of corporate financial  
14 information.

15 The court finds that the unique financial relationship between SEC and STA, and Cheong’s  
16 specific role interfacing between the two entities, supports Apple’s argument regarding unique  
17 knowledge. As the court noted earlier, in the context of a multi-national company with many high-  
18 level executives, the fact that the named deponent is a chief financial officer factors alongside the  
19 relevance and materiality of his knowledge and the availability of other sources of the information  
20 being sought. Like that in *Kennedy*, where the court found that the CEO had relevant personal  
21 knowledge because he was identified by other employees as the main decision-maker regarding  
22 certain issues that were in dispute,<sup>57</sup> Cheong maintains a unique role as the financial interface  
23 between SEC and SEC. As to Cheong, the court therefore GRANTS Apple’s motion to compel and  
24 DENIES Samsung’s cross-motion for a protective order. Apple may depose Cheong for no more  
25 than three hours.

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27 <sup>57</sup> See *Kennedy*, 2010 U.S. Dist. LEXIS 47866 at \*7-8.

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**IV. CONCLUSION**

Apple's motion to compel depositions of Choi, Hong, Cho, Sohn, and Cheong is GRANTED-IN-PART in accordance with the limitations set forth above. Samsung shall offer dates for these depositions, to take place no later than April 20, 2012. The court further GRANTS Samsung's motion for a protective order with respect to Shin.

**IT IS SO ORDERED.**

Dated: 4/4/2012

  
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PAUL S. GREWAL  
United States Magistrate Judge