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 16

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
 19

20 APPLE INC., a California corporation,

21 Plaintiff,

22 vs.

23 SAMSUNG ELECTRONICS CO., LTD., a  
 Korean business entity; SAMSUNG  
 24 ELECTRONICS AMERICA, INC., a New  
 York corporation; SAMSUNG  
 25 TELECOMMUNICATIONS AMERICA,  
 LLC, a Delaware limited liability company,  
 26

27 Defendants.  
 28

CASE NO. 11-cv-01846-LHK (PSG)

**SAMSUNG'S OPPOSITION TO APPLE'S  
 ADMINISTRATIVE REQUEST FOR  
 LEAVE TO FILE SUPPLEMENTAL  
 DECLARATION OF ERIK J. OLSON IN  
 SUPPORT OF APPLE'S RULE 37(b)(2)  
 MOTION RE SAMSUNG'S ALLEGED  
 VIOLATION OF JANUARY 27, 2012  
 DAMAGES DISCOVERY ORDER**

Date: April 9, 2012  
 Time: 10:00 a.m.  
 Place: Courtroom 5, 4th Floor  
 Judge: Hon. Paul S. Grewal

1 Civil Local Rule 7-3(d) requires that “[o]nce a reply is filed, no additional memoranda,  
2 papers or letters may be filed without prior Court approval,” unless a party meets certain  
3 exceptions not relevant here. Apple filed its Rule 37(b)(2) motion on February 28, 2012.  
4 Samsung filed its opposition on March 13, 2012, and Apple filed its reply on March 20, 2012.  
5 The Court heard argument on Apple's motion two weeks ago, on April 9, 2012. The record is now  
6 closed, as evidenced by the Court’s denial of Samsung’s request for leave to file a sur-reply to the  
7 very same motion. (Dkt. 863.) Apple’s request to file a supplemental declaration should likewise  
8 be denied as untimely.

9 What is more, contrary to Apple’s assertions, its motion does not just seek to “make the  
10 Court aware” of certain post-hearing developments. Rather, Apple seeks to delay the deposition  
11 of Apple's damages expert, Terry Musika, whose report lies at the heart of Apple’s damages claim.  
12 Mr. Musika is currently scheduled to be deposed on April 26, 2012. This was a date *offered and*  
13 *agreed to in writing* by Apple before it apparently decided on a new strategy of using its pending  
14 sanctions motion to delay the deposition. (See Anderson Declaration, Exh. A.) Given the  
15 magnitude of the damages numbers Mr. Musika conjures, and his novel approach to arriving at  
16 those numbers, Samsung will be substantially prejudiced by any further delay in deposing Mr.  
17 Musika. As Apple well knows, *Daubert* motions are due in less than a month, on May 17, 2012.  
18 (Dkt. 869 at 2.) Samsung should be allowed to take Mr. Musika’s deposition this week, on the  
19 date proposed by Apple eleven days ago, so that it has sufficient time to prepare a *Daubert* and/or  
20 summary adjudication motion.

21 Moreover, at the hearing on April 9, Apple argued that – if the Court ordered Samsung to  
22 produce additional documents – *both side’s experts* should submit supplemental reports. (See  
23 Anderson Declaration, Exh. B, at 103:4-14.) Yet now, Apple seeks to defer only its own damages  
24 expert’s deposition, while the deposition of Samsung’s rebuttal damages expert proceeds as  
25 planned. This would give Apple an unfair tactical advantage in this crucial phase of the case by  
26 blocking Samsung from preparing a *Daubert* motion or other challenge, while allowing Apple to  
27 proceed with the discovery it needs for the same purpose.

1 For the foregoing reasons, Samsung respectfully requests that the Court deny Apple leave  
2 to file a Supplemental Declaration in Support of its Rule 37(b)(2) Motion Re Samsung's Alleged  
3 Violation of January 27, 2012 Damages Discovery Order. If the Court does grant Apple leave,  
4 Samsung respectfully requests leave to respond to Apple's unfounded allegations in a  
5 supplemental declaration of its own.

6 DATED: April 22, 2012

Respectfully submitted,

8 QUINN EMANUEL URQUHART & SULLIVAN, LLP

9 By: /s/ Victoria F. Maroulis  
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