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 15 INC. and SAMSUNG
 TELECOMMUNICATIONS AMERICA, LLC
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17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
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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 Defendant.
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CASE NO. 11-cv-01846-LHK
**SAMSUNG'S RESPONSE TO APPLE'S
 STATUS UPDATE REGARDING
 COMPLIANCE WITH APRIL 12 ORDER**

1 Apple has made no showing that excuses its failure to timely comply with the Court's April
2 12 Order; on the contrary, the evidence Apple has presented to the Court demonstrates that
3 Apple's purported "production problems" are entirely of Apple's own making. Apple has known
4 for months which related proceedings Samsung was seeking documents from, yet Apple failed to
5 identify for Samsung the majority of the third-parties whose consent Apple now claims prevents it
6 from timely complying with the Court's April 12 Order. Apple is a party to the proceedings from
7 which the Court has compelled Apple to produce documents, and Apple therefore could have
8 easily (and should have) identified and resolved any necessary third-party consents in the meet and
9 confer process, in opposition to Samsung's motion to compel, or, at the very latest, at the hearing
10 on Samsung's motion to compel.¹

11 But Apple not only failed at each of these points to inform Samsung and the Court of the
12 additional third parties whose CBI Apple now claims is implicated by the April 12 Order, it failed
13 to raise the issue in a timely fashion even after the April 12 Order. By Apple's own admission, it
14 did nothing for nearly *two weeks* following the Court's April 12 Order and did not even begin
15 seeking additional third-party consents until April 25, only two days prior to Apple's compliance
16 deadline. Apple similarly waited until the day before its compliance was due to inform Samsung
17 and the Court of its supposed "production problems." Given the many consents Apple has
18 apparently obtained since it began seeking them on April 25, Apple could have obtained these
19 consents and produced documents prior to its compliance deadline if it had begun seeking the
20 consents upon issuance of the April 12 Order instead of waiting for two weeks and only starting to
21 seek consents two days before the compliance deadline.

22 Additionally, Apple's Status Update makes it clear that it still has not sufficiently reviewed
23 the compelled documents to determine which third parties are implicated. With respect to the
24

25 ¹ Indeed (if Apple's current position is to be believed), Apple had falsely represented to
26 Samsung in early February that there were no obstacles to production once Samsung obtained
27 consent from the *five* third-party entities Apple identified before April 12. Letter from Jason
28 Bartlett to Diane Hutnyan, dated February 10, 2012 ("Samsung needs to obtain [third party]
consent before Apple can produce unredacted confidential documents. Once Samsung obtains this
consent, Apple will promptly produce such documents.").

1 *Elan v. Apple* action pending in the Northern District of California, Apple states that "[c]ounsel for
2 Apple in that action is reviewing to confirm no additional consents are required prior to
3 production." Dkt. No. 903 at 2:20-22. Thus, Apple's contention in its Status Update that it
4 brought its "production problems to the court's attention 'as soon as practicable'" is belied by the
5 facts, as is its supposed diligence in complying with the Court's April 12 Order.²

6 Nothing in the Office of Unfair Import Investigation's ("OUII")'s response has a bearing on
7 the situation here. Though Apple points to the response as support for the idea that Apple may not
8 produce these materials, it does no such thing. Apple fails to point out that the relief it requested
9 was to allow it to produce the documents *without* third-party consent; thus even a denial (and the
10 OUII's response is not a ruling by the ALJ) would merely maintain the status quo because Apple
11 can still produce these documents *with* consent. Indeed, Apple has already obtained Motorola's
12 and HTC's consent to produce CBI in documents from the Motorola 745 and 750 and HTC 797
13 Investigations, and it claims to have already produced materials from those investigations.

14 Apple has further refused Samsung's efforts to try to alleviate its supposed burden and
15 expedite production of the remaining materials. With just 160-175 documents remaining,³
16 Samsung has repeatedly requested that Apple identify these materials to ascertain whether some
17 practical compromise may be reached. But Apple's counsel of record has refused, claiming that
18 cannot obtain that basic information from Apple's other outside counsel, and apparently forgetting
19 that it is *Apple* which is under court order to produce them. Samsung has also suggested that these
20 materials could be produced with any remaining CBI redacted, so that it may receive the materials
21 in redacted form and see whether or not it might be able to accept some or all of those redactions,
22 but Apple has complained this is too burdensome. Apple should not be excused from compliance
23 when it has chosen to avoid every practical solution to avoid or minimize the problem.

24 Apple's continued failure to produce these highly relevant materials has substantially
25 prejudiced Samsung, which has been deprived of any opportunity to conduct follow-up discovery

26 ² Nor is there any evidence that Apple has diligently pursued anything since it sent notices
27 out and filed its motion at the ITC more than a week ago.

28 ³ According to Apple's representations.

1 based on the documents, to use the documents in expert reports or to conduct any expert discovery
2 using the documents. And now, with summary judgment motions due in nine days, Apple's failure
3 to take reasonable steps to timely comply with the April 12 Order threatens to deprive Samsung of
4 an opportunity to use the documents – which contain Apple's statements regarding the scope and
5 validity of the intellectual property at issue in this lawsuit – to dispose of Apple's claims prior to
6 trial.

7 Samsung therefore requests that the Court compel Apple to (1) immediately produce in
8 redacted form all documents compelled by the Court's April 12 Order which Apple continues to
9 withhold, (2) confer with Samsung regarding which, if any, of these documents need to be
10 produced in unredacted, or partially unredacted, form, and (3) seek consent to remove specific
11 redactions and to do so within a timeframe that will permit Samsung to obtain unredacted copies
12 of the documents in time to use them in summary judgment motions.

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14 DATED: May 8, 2012

Respectfully submitted,

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By /s/ Victoria F. Maroulis

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