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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION
17

18 APPLE INC., a California corporation,

19 Plaintiff,

20 v.

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

25 Defendants.

Case No. 11-cv-01846-LHK

**[PROPOSED] ORDER GRANTING
APPLE'S MOTION TO EXCLUDE
TESTIMONY OF SAMSUNG'S
EXPERTS**

Date: June 21, 2012
Time: 1:30 p.m.
Place: Courtroom 8, 4th Floor
Judge: Hon. Lucy H. Koh

1 Apple has moved *in limine*, pursuant to Federal Rules of Evidence 401, 402, 403, 702, and
2 *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), to exclude certain testimony of
3 Samsung’s proffered experts Itay Sherman (“Sherman”), Sam Lucente (“Lucente”), Mark Lehto
4 (“Lehto”), Nicholas Godici (“Godici”), George Mantis (“Mantis”), Michael Mazis (“Mazis”),
5 Michael Kamins (“Kamins”) , and Michael Wagner (“Wagner”). The Court finds that the
6 testimony of Samsung’s proffered experts fails to meet the standard for admissibility of expert
7 testimony, and therefore **GRANTS** Apple’s motion in its entirety.

8 1. Itay Sherman’s opinions regarding design patent infringement and validity are
9 excluded under Federal Rules of Evidence 401, 402, 403 and 702 as irrelevant, unhelpful to the
10 jury, contrary to law, and unreliable.

11 2. Itay Sherman’s opinions regarding trade dress functionality are excluded under
12 Federal Rules of Evidence 401, 402, 403 and 702 as irrelevant, unhelpful to the jury, contrary to
13 law, and unreliable.

14 3. Because these topics constitute substantially all of Mr. Sherman’s testimony,
15 Samsung shall not call him to testify.

16 4. Sam Lucente’s opinions regarding design patent infringement, functionality, and
17 obviousness are excluded under Federal Rules of Evidence 401, 402, 403 and 702 as irrelevant,
18 unhelpful to the jury, contrary to law, and unreliable.

19 5. Sam Lucente’s opinions regarding trade dress distinctiveness, confusion as to
20 source, and functionality are excluded under Federal Rules of Evidence 401, 402, 403 and 702 as
21 irrelevant, unhelpful to the jury, contrary to law, and unreliable.

22 6. Mark Lehto’s opinions regarding functionality of the asserted design patents and
23 trade dress are excluded under Federal Rules of Evidence 401, 402, 403 and 702 as irrelevant,
24 unhelpful to the jury, contrary to law, and unreliable. Because these topics constitute
25 substantially all of his testimony, Samsung shall not call him to testify.

26 7. Nicholas Godici’s opinions regarding design patent scope, design patent non-
27 infringement, design patent indefiniteness, the use of broken lines in design patents, and PTO
28 design patent examination are excluded under Federal Rules of Evidence 401, 402, 403 and 702

1 as irrelevant, unhelpful to the jury, contrary to law, and unreliable. Because these topics
2 constitute substantially all of his testimony, Samsung shall not call him to testify.

3 8. George Mantis's survey and associated testimony are excluded under Federal
4 Rules of Evidence 401, 402, 403 and 702 as irrelevant, unhelpful to the jury, contrary to law, and
5 unreliable. Because these topics constitute substantially all of his testimony, Samsung shall not
6 call him to testify.

7 9. Michael Mazis's survey and associated testimony are excluded under Federal
8 Rules of Evidence 401, 402, 403 and 702 as irrelevant, unhelpful to the jury, contrary to law, and
9 unreliable. Because these topics constitute substantially all of his testimony, Samsung shall not
10 call him to testify.

11 10. Michael Kamins's survey and associated testimony are excluded under Federal
12 Rules of Evidence 401, 402, 403 and 702 as irrelevant, unhelpful to the jury, contrary to law, and
13 unreliable.

14 11. Michael Wagner's opinion that profits awarded pursuant to 35 U.S.C. § 289 may
15 be allocated is excluded under Federal Rules of Evidence 401, 402, 403 and 702 as contrary to
16 law.

17 12. Michael Wagner's opinion that lost profits are not appropriate because Apple must
18 show demand specific to the patented feature under the Panduit test is excluded under Federal
19 Rules of Evidence 401, 402, 403 and 702 as contrary to law.

20 13. Michael Wagner's opinion apportioning at most one percent of Samsung's profits
21 to "Apple's design-related IP" is, with associated analysis, excluded pursuant to Federal Rule of
22 Evidence 702 because it is unreliable.

23 **IT IS SO ORDERED.**

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25 Dated: _____

26 _____
27 Honorable Lucy H. Koh
28 United States District Judge