

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Charles K. Verhoeven (Bar No. 170151)

2 charlesverhoeven@quinnemanuel.com

50 California Street, 22nd Floor

3 San Francisco, California 94111

Telephone: (415) 875-6600

4 Facsimile: (415) 875-6700

5 Kevin P.B. Johnson (Bar No. 177129)

kevinjohnson@quinnemanuel.com

6 Victoria F. Maroulis (Bar No. 202603)

victoriamaroulis@quinnemanuel.com

7 555 Twin Dolphin Drive, 5th Floor

Redwood Shores, California 94065-2139

8 Telephone: (650) 801-5000

9 Facsimile: (650) 801-5100

10 Michael T. Zeller (Bar No. 196417)

michaelzeller@quinnemanuel.com

11 865 S. Figueroa St., 10th Floor

Los Angeles, California 90017

12 Telephone: (213) 443-3000

13 Facsimile: (213) 443-3100

14 Attorneys for SAMSUNG ELECTRONICS CO.,
LTD., SAMSUNG ELECTRONICS AMERICA,
15 INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC
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 Defendant.
27

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S STATEMENT REGARDING
THE IMPACT OF ITS CASE
NARROWING MOTIONS**

Date: May 21, 2012

1 Pursuant to the Court’s May 10, 2012 Order, Samsung submits this statement identifying
2 the impact of its May 17, 2012 motions on the scope of trial. Favorable resolution of Samsung’s
3 motions will substantially narrow the issues presented to the jury, reduce the time needed for trial
4 significantly, and ensure that only proper evidence and testimony is presented during trial.
5 Samsung respectfully submits that, without substantial reduction as sought by Samsung’s motions,
6 trial of necessity will run longer than limits the Court has set, and a jury will be unable to fairly
7 adjudicate all issues. (*See* Dkt. 907.)

8 **Samsung’s Motion for Summary Judgment**

9 *All* of Apple’s claims based on its trade dresses, design patents, and utility patents that
10 remain in this case fail as a matter of law based on the undisputed evidence in the record.
11 Samsung’s Motion for Summary Judgment seeks judgment in its favor reflecting these undisputed
12 facts. Samsung’s Motion also requests the Court grant summary judgment in its favor on Apple’s
13 claims for damages under the Sherman Act and Unfair Competition Laws.

14 *Apple’s Trade Dress Claims.* The undisputed facts of this case show that Apple’s asserted
15 trade dresses—which it defines to include such elements as “a rectangular product with four
16 evenly rounded corners, a flat clear face covering the front of the product, a large display screen
17 under the clear surface, substantial black borders above and below the display screen and narrower
18 black borders on either side of the screen under the clear surface,” (but does not include the Apple
19 logo or the “home” button) are functional under binding Supreme Court precedent because they
20 affect the cost or quality of the products. As a matter of law, no amount of alternative products or
21 even superior designs can change the functional nature of elements that affect the cost or quality of
22 products. Additionally, Apple’s asserted trade dress is aesthetically functional: Apple asserts the
23 dress is appealing and demanded by customers *aside* from its identification of origin, which ends
24 the inquiry. Because Apple’s asserted trade dresses are invalid and unprotectable, Apple’s trade
25 dress infringement and dilution claims all fail.

26 Apple’s dilution claims fail for the additional reason that it has no evidence to support a
27 finding that its asserted trade dresses satisfy the degree of fame required by the Ninth Circuit to
28 render trade dress protectable. Its own survey shows that it falls short as a matter of law.

1 The Court should also exclude the testimony of: (1) John Hauser, who conducted wholly
2 unreliable surveys and has not provided critical pre-test information; (2) Henry Urbach, who offers
3 only his say-so on the value of Apple's design; (3) Susan Kare, who ignores *all* applicable legal
4 standards in her analysis of trade dress; (4) Russell Winer, who only offers summary argument;
5 (5) Dr. Sanjay Sood, who bases his design analysis on wholly unrelated products; (6) Michael
6 Walker, who has not performed any of the analysis he puts forward as critical to Samsung's IPR
7 disclosure duty; and (7) Richard Donaldson, whose testimony should be limited to exclude legal
8 analysis that is the province of the Court alone. The proper exclusion of these experts will lessen
9 the burden on the jury significantly.

10 **Samsung's Motion to Strike Testimony Based on Undisclosed Facts and Theories**

11 Samsung's final motion requests that the Court strike Apple's experts' opinions that rely
12 on theories and facts Apple deliberately and prejudicially withheld throughout discovery. In
13 particular, the Court should limit the testimony of: (1) Dr. Michel Maharbiz, who relies on reports
14 that Apple withheld and are critical to his analysis; (2) Peter Bressler, who relies on undisclosed
15 alternatives to Apple's designs; (3) Dr. Tony Givargis, who relies on undisclosed documents for
16 his invalidity analysis; (4) Dr. Ravin Balakrishnan, who bases his opinions on devices that Apple
17 has refused to allow Samsung to inspect; and (5) Russell Winer, who advances undisclosed facts
18 and theories to support his dilution analysis.

19 Additionally, to the extent that they are not excluded entirely, the Court should limit the
20 testimony of: (1) Susan Kare, who relies on undisclosed alternatives to Apple's alleged trade
21 dress; (2) Dr. Sanjay Sood, who has not provided his survey questionnaires; and (3) Terry Musika,
22 who relies on licensing data that Apple has repeatedly and improperly clawed back, materially
23 changed, and belatedly reproduced.

24 The proper exclusion of this testimony will limit the number of theories the jury must
25 consider as to Apple's affirmative case and Samsung's '711 patent.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: May 21, 2012

Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Victoria F. Maroulis
Charles K. Verhoeven
Kevin P.B. Johnson
Victoria F. Maroulis
Michael T. Zeller
Attorneys for SAMSUNG ELECTRONICS CO.,
LTD., SAMSUNG ELECTRONICS AMERICA,
INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC