

1 HAROLD J. MCELHINNY (CA SBN 66781)
 hmcclhinny@mofo.com
 2 MICHAEL A. JACOBS (CA SBN 111664)
 mjacobs@mofo.com
 3 JENNIFER LEE TAYLOR (CA SBN 161368)
 jtaylor@mofo.com
 4 ALISON M. TUCHER (CA SBN 171363)
 atucher@mofo.com
 5 RICHARD S.J. HUNG (CA SBN 197425)
 rhung@mofo.com
 6 JASON R. BARTLETT (CA SBN 214530)
 jasonbartlett@mofo.com
 7 MORRISON & FOERSTER LLP
 425 Market Street
 8 San Francisco, California 94105-2482
 Telephone: (415) 268-7000
 9 Facsimile: (415) 268-7522

QUINN EMANUEL URQUHART &
 SULLIVAN, LLP
 Charles K. Verhoeven (Cal. Bar No.
 170151)
 50 California Street, 22nd Floor
 San Francisco, California 94111
 Telephone: (415) 875-6600
 Facsimile: (415) 875-6700
 Kevin P.B. Johnson (Cal. Bar No. 177129)
 Victoria F. Maroulis (Cal. Bar No. 202603)
 555 Twin Dolphin Drive 5th Floor
 Redwood Shores, California 94065
 Telephone: (650) 801-5000
 Facsimile: (650) 801-5100
 Michael T. Zeller (Cal. Bar No. 196417)
 865 S. Figueroa St., 10th Floor
 Los Angeles, California 90017
 Telephone: (213) 443-3000
 Facsimile: (213) 443-3100

10 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC.

Attorneys for SAMSUNG ELECTRONICS
 CO., LTD., SAMSUNG ELECTRONICS
 AMERICA, INC. and SAMSUNG
 TELECOMMUNICATIONS AMERICA,
 LLC

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

18 APPLE INC., a California corporation,
 19 Plaintiff,
 20 v.
 21 SAMSUNG ELECTRONICS CO., LTD., a
 Korean corporation; SAMSUNG ELECTRONICS
 22 AMERICA, INC., a New York corporation; and
 SAMSUNG TELECOMMUNICATIONS
 23 AMERICA, LLC, a Delaware limited liability
 company,
 24 Defendants.

Case No. 11-cv-01846-LHK

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER
 DISMISSING CLAIMS
 WITHOUT PREJUDICE**

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*Additional attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.*

WILLIAM F. LEE
william.lee@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
mark.selwyn@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
950 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 858-6000
Facsimile: (650) 858-6100

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Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and the Court’s May 10, 2012 Order Regarding Parties’ Statements Narrowing Claims to be Asserted at Trial (Dkt. No. 912), the parties, through their respective counsel of record, hereby stipulate and agree as follows:

WHEREAS, Apple Inc. (“Apple”) commenced the above-captioned action (the “Litigation”) against Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively “Samsung,” and together with Apple, “the Parties” and individually each a “Party”) on April 15, 2011;

WHEREAS, pursuant to the Court’s May 2, 2012 Case Management Order, a trial in this action shall commence on July 30, 2012 (Dkt. No. 901);

WHEREAS, both parties have previously represented to each other and to the Court that each is willing to dismiss certain claims and counterclaims in the interests of streamlining and simplifying the issues in this case (Dkt. Nos. 893, 902);

WHEREAS, the Court’s May 10 Order instructed that the parties file a stipulation dismissing without prejudice the claims and counterclaims that will not be tried on July 30, 2012;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties as follows:

1. This Stipulation and Order dismisses without prejudice any claims by Apple against Samsung for infringement of:
 - a. U.S. Patent No. 6,493,002 (Eighth Claim for Relief);
 - b. Claims 1-18 and 20 of U.S. Patent No. 7,469,381 (Ninth Claim for Relief);
 - c. Claim 1-3, 6-7, 10, and 11 of U.S. Patent No. 7,663,607 (Tenth Claim for Relief);
 - d. U.S. Patent No. 7,812,828 (Eleventh Claim for Relief);
 - e. Claims 1-7 and 9-21 of U.S. Patent No. 7,844,915 (Twelfth Claim for Relief);
 - f. U.S. Patent No. 7,853,891 (Thirteenth Claim for Relief);
 - g. Claims 2, 4-13, 17-18, 27-42, 47-49, and 51-52 of U.S. Patent No. 7,864,163 (Fourteenth Claim for Relief);

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- h. U.S. Patent No. 7,920,129 (Fifteenth Claim for Relief);
- i. U.S. Patent No. D627,790 (Sixteenth Claim for Relief);
- j. U.S. Patent No. D622,270 (Twenty-Second Claim for Relief);
- k. iPhone trade dress, based on U.S. Registration No. 3,470,983 (First and Second Claims for Relief);
- l. iPhone trade dress, based on unregistered combination iPhone/iPhone 3G/iPhone 4 trade dress (First Claim for Relief);
- m. iPhone trade dress, based on unregistered iPhone 3G trade dress (First Claim for Relief);
- n. Registered Trademarks 3,889,642; 3,886,200; 3,889,685; 3,886,169; and 3,886,197; 3,886,196; 2,935,038; and 3,889,642 (Third and Fifth Claims for Relief);
- o. Unregistered Trademarks (Fifth Claim for Relief).

2. This Stipulation and Order dismisses without prejudice any claims by Apple against Samsung for infringement and dilution of:

- a. iPhone trade dress, based on U.S. Registration No. 3,457,218 (First, Second, and Fourth Claims for Relief);
- b. iPhone trade dress, based on U.S. Registration No. 3,475,327 (First, Second, and Fourth Claims for Relief);
- c. iPhone trade dress, based on unregistered original iPhone trade dress (First and Fourth Claims for Relief); and
- d. iPhone trade dress, based on unregistered iPhone 4 trade dress (First and Fourth Claims for Relief).

3. This Stipulation and Order dismisses without prejudice claims by Apple against Samsung for unfair business practices under California Business and Professions Code Section 17200 pursuant to the Sixth Claim for Relief.

4. This Stipulation and Order dismisses without prejudice claims by Apple against Samsung for Unjust Enrichment pursuant to the Seventh Claim for Relief.

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5. Samsung agrees that its corresponding counterclaims seeking declaratory judgment of non-infringement and invalidity for Apple’s dismissed claims for patent, trademark, and trade dress infringement, as well as Samsung’s counterclaims for a declaration of nonviolation of California Business and Professions Code § 17200 and cancelation of Apple’s dismissed registered trademarks and trade dress, should be dismissed without prejudice. This stipulation of dismissal without prejudice is made subject to Samsung’s reservation of rights to reassert these or other counterclaims and defenses relating to Apple’s dismissed claims should any such dismissed claim be revived or reasserted by Apple for any reason.

6. This Stipulation and Order dismisses without prejudice any claims by Samsung Electronics Co. Ltd. and Samsung Telecommunications America, LLC (collectively, the “Samsung Patent Counterclaimants”) against Apple for infringement of:

- a. U.S. Patent No. 7,050,410;
- b. U.S. Patent No. 7,069,055;
- c. U.S. Patent No. 7,200,792;
- d. U.S. Patent No. 7,386,001;
- e. U.S. Patent No. 7,079,871;
- f. Claims 1, 2, 4, 6-9, 13, 16-18 of U.S. Patent No. 7,675,941;
- g. Claims 1-4, 6, 10-12, 19-22 and 24 of U.S. Patent No. 6,928,604;
- h. Claims 1-6, 9-10, 14, 18-20, 23-24 and 28 of U.S. Patent No. 7,447,516;
- i. Claims 27 and 30 of U.S. Patent No. 7,362,867;
- j. Claims 1-2, 7-8 and 15-18. of U.S. Patent No. 7,698,711; and
- k. Claims 1-4, 6-8, 11 and 13-16 of U.S. Patent No. 7,546,893.

7. Apple agrees that its corresponding counterclaims seeking declaratory judgment of non-infringement and invalidity for the Samsung Patent Counterclaimants’ dismissed claims should be dismissed without prejudice. This stipulation of dismissal without prejudice is made subject to Apple’s reservation of rights to reassert these or other counterclaims and defenses relating to the Samsung Patent Counterclaimants’ dismissed claims should any such dismissed claim be revived or reasserted by the Samsung Patent Counterclaimants for any reason.

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8. This Stipulation and Order is not an adjudication on the merits of any of the claims or counterclaims that are hereby dismissed without prejudice.

Dated: May 21, 2012

MORRISON & FOERSTER LLP

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Harold McElhinny
HAROLD J. MCELHINNY
MICHAEL A. JACOBS
JENNIFER LEE TAYLOR
ALISON M. TUCHER
RICHARD S.J. HUNG
JASON R. BARTLETT

By: /s/ Todd Bridges
CHARLES K. VERHOEVEN
KEVIN P.B. JOHNSON
VICTORIA F. MAROULIS
EDWARD DEFRANCO
MICHAEL T. ZELLER

WILLIAM F. LEE
MARK D. SELWYN

Attorneys for APPLE INC.

Attorneys for SAMSUNG ELECTRONICS CO. LTD, SAMSUNG ELECTRONICS AMERICA, INC., AND SAMSUNG TELECOMMUNICATIONS AMERICA, LLC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: May 29, 2012, 2012

By: 
The Honorable Lucy H. Koh
United States District Judge