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19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

21 APPLE INC., a California corporation,

22 Plaintiff,

23 vs.

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

27 Defendants.
28

CASE NO. 12-CV-00630-LHK (PSG)

**SAMSUNG'S REPLY IN SUPPORT OF
ITS MOTION FOR LEAVE TO
SUPPLEMENT ITS INFRINGEMENT
CONTENTIONS**

Date: November 6, 2012
Time: 10:00 a.m.
Place: Courtroom 5
Judge: Honorable Paul S. Grewal

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 In its moving papers, Samsung established good cause to add the iPhone 5 to Samsung's
4 infringement contentions. Among other things, Samsung showed that: (1) the iPhone 5 was not
5 available when Samsung submitted its original infringement contentions; (2) once the product was
6 announced, Samsung acted with diligence to investigate the product; (3) Samsung moved
7 promptly – within just ten days of the product's release – to supplement its contentions; and (4)
8 Apple has not shown that it would be prejudiced by the addition of the iPhone 5 to Samsung's
9 infringement contentions. Apple challenges *none* of these points.

10 Instead, Apple's Response focuses on the fact that Apple has also moved to amend its
11 infringement contentions to add recently-released products. Apple's response seems to suggest
12 that the parties' proposed amendments are comparable. Apple's suggestion is incorrect.
13 Samsung agrees that Apple's request to add the Galaxy Note. 10.1 is similar to Samsung's request
14 to add the iPhone 5, although Samsung notes that Apple waited six weeks after release of the
15 Galaxy Note 10.1 to move to supplement its contentions, while Samsung moved to amend within
16 only ten days of release of the iPhone 5. Because of the somewhat comparable circumstances,
17 and in an effort to be reasonable, Samsung does not oppose Apple's request to add the Galaxy
18 Note 10.1 to its contentions to the extent that Samsung is also granted leave to amend its
19 infringement contentions to add the iPhone 5.¹

20 Samsung, however, opposes Apple's motion to amend its infringement contentions in
21 *other* respects, notably, to the extent that its proposed amendments would substantively change
22 and/or expand Apple's contentions without good cause. Specifically, Samsung opposes: (1)
23 Apple's attempt to indefinitely expand the scope of its allegations by asserting infringement
24 generally against a newer version of Android, called "Jelly Bean"; (2) Apple's request to add three
25

26 _____
27 ¹ Samsung also does not oppose certain other aspects of Apple's motion, as set forth in
28 detail in Samsung's Opposition to Apple's Motion for Leave to Amend Its Disclosure of Asserted
Claims and Infringement Contentions. Dkt. No. 285.

1 new claim charts more than three months after its infringement contentions were due; and (3)
2 Apple's effort to assert five additional claims against each of the seventeen originally accused
3 devices.

4 **ARGUMENT**

5 **I. Apple Does Not Dispute That Samsung Has Established Good Cause To Add**
6 **The iPhone 5.**

7 Apple's Response does not challenge Samsung's showing of good cause in moving to
8 supplement its infringement contentions to add the iPhone 5, including that: (1) the iPhone 5 was
9 not available when Samsung submitted its original contentions; (2) once the product was
10 announced, Samsung acted with diligence to investigate the product and to move to supplement its
11 contentions; and (3) Apple has not shown that it would be prejudiced by the addition. Apple's
12 silence on each of these key points should be viewed as a tacit admission that Samsung has
13 established good cause to add iPhone 5 to its infringement contentions.

14 **II. Apple's Vague Response to Samsung's Motion Requires Clarification – Samsung**
15 **Opposes Most Of Apple's Motion For Leave To Amend Its Infringement**
16 **Contentions.**

17 The parties have each filed motions for leave to amend and/or supplement their
18 infringement contentions. Samsung's motion, which was filed on October 1, 2012, simply seeks
19 to add the iPhone 5 as an accused product. *See* Dkt. No. 267. Apple's motion, filed October 5,
20 2012, is much less clear-cut. Apple seeks: (1) to add contentions concerning "new" devices; (2)
21 to make "minor clarifying changes" to certain claim charts; (3) to add several claim charts to its
22 contentions; and (4) to assert five additional claims of the '502 patent against all seventeen
23 products that Apple identified at the beginning of the case. *See* Dkt. No. 269. With regard to
24 category (1), the contentions Apple seeks to add concerning "new" devices are against Samsung's
25 newly-released Galaxy Note 10.1, the Galaxy S III phone that is available in the United States, and
26 the latest version of Android, "Jelly Bean." *See* Dkt. No. 269 at 3-4. Notably, the Jelly Bean
27 version of Android was developed by Google, not Samsung, and may have multiple builds and
28 models that change over time. Fazio Decl. Exs. A, B.

1 Before Apple filed its Response to Samsung’s Motion for Leave to Supplement Its
2 Infringement Contentions, (Dkt. No. 279) (the “Response”), Apple approached Samsung about
3 trying to reach agreement concerning the parties’ motions to amend their contentions. During the
4 parties’ discussions, Samsung proposed that if Apple would not oppose the addition of the iPhone
5 5 to Samsung’s infringement contentions, then Samsung would not oppose the addition of the
6 Galaxy Note 10.1 to Apple’s infringement contentions. Fazio Decl. Ex. C. Although no
7 agreement was reached, Apple states in its Response that “Apple does not oppose Samsung’s
8 motion for leave to the extent that both parties are granted leave to amend their infringement
9 contentions *to add the recently-released products.*” Response (Dkt. No. 279) at 2:23-25
10 (emphasis added). Apple’s statement suggests that the parties seek comparable amendments to
11 their infringement contentions. As detailed above, they do not.

12 Nonetheless, and consistent with the agreement that Samsung proposed, Samsung does not
13 oppose Apple’s request to add the Galaxy Note 10.1 to its contentions to the extent that Samsung
14 is also granted leave to amend its infringement contentions to add the iPhone 5. Samsung also
15 does not oppose Apple’s motion to the extent that it concerns amendments of a clerical nature² or
16 to add the substitute and additional claim charts that Apple served on Samsung on June 19, 2012
17 and August 7, 2012. Samsung *does* oppose Apple’s motion in most other respects, including the
18 addition of: (1) the “Jelly Bean” version of Android to Apple’s infringement contentions; (2) three
19 new claim charts provided to Samsung more than three months after Apple’s infringement
20 contentions were due; and (3) additional claims from one patent against each of the seventeen
21 originally accused Samsung devices. The reasons for Samsung’s opposition are fully set forth in
22 Samsung’s Opposition to Apple’s Motion for Leave to Amend Its Disclosure of Asserted Claims
23 and Infringement Contentions filed October 19, 2012, and are incorporated by reference herein.
24 Dkt. No. 285. For all the foregoing reasons, Samsung respectfully requests that the Court grant
25 Samsung’s motion for leave to amend its infringement contentions to add the iPhone 5.

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27 ² These “non-substantive changes” are fully described in Exhibit A to Apple’s Motion. See
28 Dkt. 269 at 16-17

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DATED: October 22, 2012

QUINN EMANUEL URQUHART &
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By /s/ Victoria F. Maroulis

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CIVIL L.R. 5-1 ATTESTATION

I, Michael L. Fazio, am the ECF user whose identification and password are being used to file this document. In compliance with Civil L.R. 5-1(i)(3), I attest that Victoria F. Maroulis has concurred in this filing.

/s/ Michael L. Fazio