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Counterclaim-Defendant APPLE INC.

13  
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  
Korean business entity; SAMSUNG  
22 ELECTRONICS AMERICA, INC., a New York  
corporation; SAMSUNG  
23 TELECOMMUNICATIONS AMERICA, LLC, a  
Delaware limited liability company,

24 Defendants.  
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Case No. 11-cv-01846-LHK (PSG)

**APPLE'S REQUEST FOR  
CORRECTION TO DESIGN  
PATENT CLAIM  
CONSTRUCTION**

Apple has noted several small errors in the Court's design patent claim constructions issued on July 27, 2012 and respectfully requests that they be corrected as follows.

### **D'087 Patent**

With respect to the D'087 patent, the Court's claim construction is:

The D'087 Patent claims the ornamental design of an electronic device as shown in Figures 1-~~46~~. The broken lines in the D'087 Patent constitute unclaimed subject matter. Thus, the D'087 Patent claims the front face, a 'bezel encircling the front face of the patented design [that] extends from the front of the phone to its sides,' and a flat contour of the front face, but does not claim the rest of the article of manufacture.

(Dkt. No. 1425, Order at p. 8 lines 2-6 (emphasis added).)

The D'087 patent has 48 figures, not 46 figures. Apple requests that the claim construction be corrected as follows:

The D'087 Patent claims the ornamental design of an electronic device as shown in Figures 1-~~46~~. The broken lines in the D'087 Patent constitute unclaimed subject matter. Thus, the D'087 Patent claims the front face, a 'bezel encircling the front face of the patented design [that] extends from the front of the phone to its sides,' and a flat contour of the front face, but does not claim the rest of the article of manufacture.

### **D'677 Patent**

With respect to the D'677 patent, the Court's claim construction is:

The D'677 Patent claims the ornamental design of an electronic device as shown in Figures 1-~~6~~. The broken lines in the D'677 Patent constitute unclaimed subject matter. The use of "solid black surface shading" on the D'677 Patent represents the color black. The use of oblique line shading on the D'677 Patent is used to show a transparent, translucent **and** highly polished or reflective surface.

(*Id.* at p. 9, lines 15-19 (emphasis added).)

The D'677 patent has 8 figures, not 6 figures. Moreover, because a surface cannot simultaneously have *all* of the following traits at once: transparent, translucent, highly polished, and reflective, Apple believes that the "and" in the final clause of the Court's claim construction is intended to be an "or." This is consistent with the Court's statement in the preceding paragraph that: "Thus, the use of oblique line shading and solid black surface shading in the D'677 Patent

1 indicate that the patentee claimed a black surface that is also transparent, translucent, highly  
 2 polished, or reflective.” (*Id.* at p. 9, lines 11-13 (emphasis added).)

3 Apple requests that the claim construction be corrected as follows:

4 The D’677 Patent claims the ornamental design of an electronic  
 5 device as shown in Figures 1-8. The broken lines in the D’677  
 6 Patent constitute unclaimed subject matter. The use of “solid black  
 7 surface shading” on the D’677 Patent represents the color black.  
 The use of oblique line shading on the D’677 Patent is used to show  
 a transparent, translucent or highly polished or reflective surface.

#### 8 **D’889 Patent**

9 With respect to the D’889 patent, the Court’s claim construction is:

10 The D’889 Patent claims the ornamental design of an electronic  
 11 device as shown in Figures 1-9. The broken lines depicting the  
 12 human figure in figure 9 do not form a part of the claimed design.  
 13 The other broken lines in the other figures are part of the claimed  
 14 design. The D’889 also includes oblique line shading on several of  
 the figures. The oblique line shading in Figures 1-3 and Figure 9  
 depicts a transparent, translucent and highly polished or reflective  
 surface from the top perspective view of the claimed design, the top  
 view of the claimed design, and the bottom perspective view of the  
 claimed design.

15 (*Id.* at p. 11, lines 2-8 (emphasis added).)

16 As with the D’677 patent, the use of the word “and” suggests that the surface must have  
 17 *all* of the following traits: transparent, translucent, highly polished and reflective. As explained  
 18 above, this is not consistent with the Court’s explanation of the use of the oblique lines in  
 19 connection with the D’677 patent, and it creates an impossible requirement because a surface  
 20 cannot simultaneously have all four traits at the same time.

1 Apple requests that the claim construction be corrected as follows:

2 The D'889 Patent claims the ornamental design of an electronic  
3 device as shown in Figures 1-9. The broken lines depicting the  
4 human figure in figure 9 do not form a part of the claimed design.  
5 The other broken lines in the other figures are part of the claimed  
6 design. The D'889 also includes oblique line shading on several of  
7 the figures. The oblique line shading in Figures 1-3 and Figure 9  
8 depicts a transparent, translucent or highly polished or reflective  
9 surface from the top perspective view of the claimed design, the top  
10 view of the claimed design, and the bottom perspective view of the  
11 claimed design.

12 Dated: July 28, 2012

MORRISON & FOERSTER LLP

13 By: /s/ Michael A. Jacobs  
14 Michael A. Jacobs

15 Attorneys for Plaintiff  
16 APPLE INC.