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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

vs.

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

Defendants.

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S PROFFER OF TESTIMONY
OF SHIN NISHIBORI**

1 Samsung respectfully makes a proffer of evidence regarding Shin Nishibori and his
 2 involvement in the creation of the Sony-style model, which he testified changed the course of the
 3 iPhone's development. This evidence is not being offered to prove that Apple's design patents
 4 are invalid under Section 102 or 103, but to rebut Apple's allegations that Samsung copied designs
 5 and design concepts that Apple claims are proprietary and unique to it. Mr. Nishibori's
 6 testimony and the documentary evidence, such as the Sony-style CAD files and emails,
 7 corroborate Samsung's independent creation story that the design elements found in Samsung's
 8 phones were not taken from Apple, but were known to other designers in the field. The Court's
 9 order on Apple's MIL #3 explicitly stated that evidence going "to rebut an allegation of copying"
 10 is independent from an invalidity theory. (Dkt No. 1267 at 3.) By the same logic, this evidence
 11 is relevant to rebutting Apple's allegations of willfulness. This evidence is not being asserted for
 12 invalidity purposes, or to allege any kind of wrongdoing by Apple, but to rebut Apple's factual
 13 allegations of copying and to put them in their proper context in the industry of electronic device
 14 design. The Sony-related evidence is also relevant to issues of functionality, which Samsung has
 15 been disclosing since the preliminary injunction phase. The order by Magistrate Judge Grewal
 16 striking various prior art references was not directed in any way to the functionality opinions
 17 found in Samsung's expert's report. In fact, Mr. Sherman included in his functionality section
 18 images of the Sony-Style phone model, along with text from the email revealing that Apple
 19 changed its phone design from the earlier extrudo model at least in part due to functional reasons.

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

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