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Counterclaim-Defendant APPLE INC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

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

**APPLE'S RESPONSE TO SAMSUNG'S
MOTION FOR RECONSIDERATION
REGARDING OPENING STATEMENT
SLIDES 11-19**

1 As Samsung concedes, Samsung never disclosed its independent development theory
2 underlying the documents in slides 11-19 in response to Apple's contention interrogatories. To
3 the extent these documents go to willful infringement, Samsung did not timely disclose this
4 theory. To the extent these documents go to copying, a secondary consideration of
5 nonobviousness, Samsung failed to disclose this theory, as Judge Grewal found. Furthermore,
6 when asked about the basis for Samsung's denial of copying, Samsung's corporate representative
7 on copying did not disclose these documents. (Sep. 21, 2011 J. Denison 30(b)(6) dep. at 155:10-
8 19.)¹ Not only was the alleged independent development theory never disclosed during
9 discovery, these documents are not even related to the accused products. Samsung's design
10 documents for an *unaccused* product – the F700 – are not relevant to the design of the accused
11 products. When asked whether the accused Galaxy S phone designs were based on the earlier
12 unaccused F700, Samsung's head designer and sponsor of these documents, Minhyouk Lee, said
13 no: the accused Galaxy S phone designs were his own designs. (Mar. 2, 2012 M.H. Lee dep. at
14 71:20-72:10.) Another sponsor of these documents, Hyoung Shin Park, the alleged F700
15 designer, likewise denied having any knowledge that any other Samsung phone was based on the
16 F700 design. (Feb. 29, 2012 H.S. Park Dep. at 50:25-51:3.) Hence, Samsung's theories
17 supporting the use of the documents in slides 11-19 are not only untimely, they are wholly
18 irrelevant to the accused products in this case.

19 Dated: July 30, 2012

MORRISON & FOERSTER LLP

21 By: /s/ Michael A. Jacobs
22 Michael A. Jacobs

23 Attorneys for Plaintiff
24 APPLE INC.

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26 _____
27 ¹ Apple requested, but Samsung did not provide Apple permission to unseal the
28 confidential deposition transcripts cited in this response.