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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.

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Case No. 11-cv-01846-LHK

**JOINT STATEMENT RE: PROPOSED
SCHEDULE FOR EXCHANGE OF
EXHIBITS, OBJECTIONS, AND
RESPONSES**

Trial: July 30, 2012
Time: 9:00 a.m.
Place: Courtroom 1, 5th Floor
JUDGE: HON. LUCY H. KOH

1 As the Court acknowledged at trial on Friday, the current schedule for exchanging
2 examination materials and filing objections and responses to those materials is resulting in a
3 burdensome number of filings on the Court's docket. The current schedule for objections and
4 disclosures set by the Court provides for (1) the disclosure of exhibits and demonstratives for
5 direct examination two days before witness testifies, at 7:00 p.m.; (2) the filing of objections and
6 responses relating to direct examination exhibits and demonstratives one day before the witness
7 testifies, at 8:00 a.m.; and 3) disclosure of cross-examination materials one day before the witness
8 testifies, at 2:00 p.m. Because the current schedule does not provide for objections to cross
9 examination exhibits and demonstratives, the parties previously agreed to identify objections to
10 cross-examination exhibits and demonstratives the night before the scheduled testimony and file
11 objections to the cross-examination materials the day the witness testifies, at 8:00 a.m. After trial
12 on Friday, the parties met and conferred regarding a schedule for objections and responses to
13 direct and cross-examination materials. The parties have been unable to reach agreement on a
14 schedule and thus submit separate statements and proposed schedules to the Court.

15 **Apple's Statement and Proposed Schedule:**

16 At the start of court on Friday, the parties indicated to the Court that they had agreed on a
17 schedule that would allow the Court to consider the parties' objections in advance of the pertinent
18 witness's testimony. Despite multiple attempts over the weekend to confirm with Samsung that
19 agreed schedule applied to high priority objections, Samsung has insisted on a schedule that
20 would allow the Court but **90 minutes** to consider the parties' high priority objections and
21 responses. Although Samsung complains that this schedule requires disclosure of cross-
22 examination materials two days in advance, this is precisely what Samsung agreed to on Thursday
23 night.

24 Apple understood the Court's direction on Friday to be that the parties should brief two
25 high priority objections per witness. (See e.g., 8/03/2012 Hr'g. Tr. 917:23-25 ("So two
26 objections per witness.")) Apple further understood that the two objections must be applied to
27 individual exhibits, and not to categories of exhibits. (*Id.* at 916:21-25 ("Mr. Verhoeven:...If
28 there's, say, ten exhibits and the objection is exactly the same and the briefing would be exactly

1 the same, can we do a category of objections? The Court: No, no.”.) Samsung, by contrast,
 2 interprets the Court's guidance to allow for more than two objections for each of the two exhibits.
 3 Samsung also believes that categories of objections are appropriate, such that it can object to
 4 more than two exhibits. Samsung's approach would multiply, rather than reduce, the issues for
 5 the Court's consideration and burden both the Court and the parties.

6 In view of the Court's stated preferences to have adequate time to consider the parties'
 7 objections, Apple proposes the schedule the parties agreed to on Thursday for resolving high-
 8 priority objections, which would provide the Court with the parties' written objections and
 9 responses *one day before* each witness testifies.

- 10 • **Two Days Before Witness Testifies, 10:00 a.m.:** Party calling witness discloses the
 11 direct examination exhibits and demonstratives it intends to use with that witness.
- 12 • **Two Days Before Witness Testifies, 7:00 p.m.:** Party cross-examining the witness
 13 discloses the cross examination exhibits and materials it intends to use with that witness.
- 14 • **Two Days Before Witness Testifies, midnight:** Parties exchange their two detailed
 15 written objections per witness to the exhibits, demonstratives, and/or materials the
 16 opposing party intends to use.
- 17 • **One Day Before Witness Testifies, 1:00 p.m.:** Each party files with the Court its two
 18 written objections and responses in one three-page document per witness testifying the
 19 next day.

20 The only differences that Apple proposes to clarify from the parties' previously agreed-
 21 upon schedule are:

- 22 • **Limited to high-priority objections:** Consistent with the Court's and the parties'
 23 discussion on Friday, the written objections would be limited to “high-priority”
 24 objections.
- 25 • **Single three-page brief per witness, per party:** Apple proposes a single three-page
 26 submission per witness, per party. This three-page submission would address (1) the
 27 offering party's responses to the opposing party's two high-priority objections and (2) the
 28

1 offering party's two high-priority objections to the cross examination exhibits and
2 materials.

3 Apple notes that, with respect to Monday's witnesses, Apple is reluctantly following
4 Samsung's schedule due to its unwillingness to expedite the materials for consideration by the
5 Court.

6 **Samsung's Statement and Proposed Schedule:**

7 Apple's claim that the parties reported to the Court at the beginning of the day on Friday
8 that they had agreed to a schedule for resolving objections is incorrect and belied by the
9 transcript. Although the parties had discussed several alternative schedules when the Court was
10 permitting the parties to file an unlimited number of objections, that schedule was never finalized
11 and the Court subsequently limited the parties to two written high priority objections per witness.
12 Moreover, as Apple concedes, Samsung has never agreed to Apple's scheduling proposal for high
13 priority objections.

14 Apple also claims Samsung is at fault for not expediting the objection process for the
15 witnesses to be called on Monday. But Apple waited until 7:34 p.m. on Saturday night to
16 disclose its exhibits and demonstratives for the witnesses to be called on Monday. If Apple
17 wanted to try to expedite the process, it could have sent its disclosures to Samsung on Friday
18 night.

19 Finally, Apple distorts Samsung's position on what constitutes a high priority objection.
20 Samsung does not contend that an objection to a category of documents is a high priority
21 objection based on the Court's guidance. Samsung does contend that multiple objections to a
22 single witness, exhibit or demonstrative qualify as a single high priority objection. Apple points
23 to nothing in the transcript that is inconsistent with this interpretation and it makes sense as a
24 matter of judicial efficiency to resolve all objections to a single exhibit, witness or demonstrative
25 at once.

26 Samsung submits that the below schedule is preferable because it both: (i) satisfies the
27 Court's request that each party submit only one brief addressing all objections and responses to
28 exhibits and demonstratives to be used with the witness at issue; and (ii) also complies with the

disclosure provisions set forth in the Court's July 19, 2012 Minute Order and Case Management Order (Dkt. 1267) which require the disclosure of exhibits and demonstratives to be used on direct examination by 7 p.m. two nights before a witness testifies and require the disclosure of cross examination exhibits by 2 p.m. one day before the witness testifies. Apple's proposal would unreasonably require the disclosure of cross-examination exhibits and demonstratives two days in advance. In addition to being inconsistent with the Court's prior Order, it would preclude Samsung from taking the events in Court into account when planning its cross examinations. As the Court will recall, Samsung opposed any advanced disclosure of cross examination exhibits. Moreover, Samsung's proposal ensures that the parties have sufficient time to prepare thorough objections and responses and that the objections are argued before the Court. Samsung's proposal is as follows:

- **Two Days Before Witness Testifies, 7:00 p.m.:** Party calling witness discloses exhibits and demonstratives for direct examination (Dkt. 1267, at 2);
- **One Day Before Witness Testifies, 2:00 p.m.:** Party cross-examining the witness discloses exhibits and demonstratives to be used during cross-examination (Dkt. 1267 at 2);
- **One Day Before Witness Testifies, 7:00 p.m.:** Parties exchange a description of each of their objections to the disclosures for cross and direct examination, limited to two high priority objections per witness per party. A high priority objection can contain objections on multiple grounds as long as the objections are directed to a single exhibit, demonstrative or witness;
- **Morning the Witness Testifies, 7:00 a.m.:** Each side files one brief containing 2 high priority objections per witness and/or a response to the opposing party's two high priority objections per witness. Each side will file a single brief addressing all witnesses, limited to 3 double-spaced pages per witness; and
- **Morning the Witness Testifies, 8:30 a.m.:** The Court hears oral argument regarding the objections and responses.

1 Dated: August 6, 2012

2 MORRISON & FOERSTER LLP

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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4
5 By: /s/ Michael A. Jacobs
MICHAEL A. JACOBS

By: /s/ Victoria F. Maroulis
VICTORIA F. MAROULIS

6 Attorneys for APPLE INC.

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

ATTESTATION

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Declaration. In compliance with General Order 45, X.B., I hereby attest that Victoria F. Maroulis has concurred in this filing.

Dated: August 6, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs