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AMERICA, INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION
18

19 APPLE INC., a California corporation,

20 Plaintiff,

21 v.
22

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

26 Defendants.
27
28

Case No. 11-cv-01846-LHK

**JOINT STIPULATION AND
[PROPOSED] ORDER
REGARDING A PROCEDURE
FOR REDUCING THE NUMBER
OF SEALING REQUESTS**

1 WHEREAS, each of the parties in this case has produced highly confidential and sensitive
2 financial data, source code, and licensing information that may be used at trial (the “Highly
3 Confidential Information”);

4 WHEREAS, in order to avoid disputes about the use and admission into evidence of the
5 Highly Confidential Information, and to avoid burdening the Court and jury with potential
6 motions, objections and delays arising therefrom, the parties have agreed on a mechanism
7 regarding the use and admission of the Highly Confidential Information at trial, which mechanism
8 is embodied in this stipulation;

9 WHEREAS, this stipulation shall not affect any objection to the admissibility of any
10 exhibit unless the admissibility of such exhibit is specifically addressed herein;

11 WHEREAS, this stipulation is not a waiver of any claims or defenses or claims for relief;

12 WHEREAS, no stipulations about the admissibility or exclusion of exhibits, either in
13 whole or in part, shall be implied other than what is specifically identified herein.

14 IT IS HEREBY AGREED AND STIPULATED BY AND BETWEEN THE PARTIES
15 THROUGH THEIR RESPECTIVE COUNSEL OF RECORD AS FOLLOWS:

16 1. With the exception of calculations concerning manufacturing or supply capacity
17 used in connection with Apple's claim for lost profits, each party will not challenge in the trial or
18 appellate court the sufficiency of the evidence to support the opposing party's damage calculations
19 on the ground that the calculations rely on the exhibits identified below and not the more detailed
20 financial information available from other proposed exhibits.

21 2. With the exception of calculations concerning manufacturing or supply capacity
22 used in connection with Apple's claim for lost profits, each party will not move for a new trial on
23 the ground that the damages calculations expressed in the exhibits identified below were against
24 the manifest weight of the evidence on the ground that detailed financial information was not
25 submitted at trial.

26 3. With the exception of calculations concerning manufacturing or supply capacity
27 used in connection with Apple's claim for lost profits, each party will not argue to the jury that the
28 damages calculations presented by means of the exhibits discussed below were improper on the

1 ground that the jury had not received or seen the underlying supporting documents or more
2 detailed calculations to support them.

3 4. The parties will not oppose each others' efforts to seal the record with respect to the
4 source code from exhibits PX31 (Samsung source code), PX121 (Apple source code), and DX645
5 (Apple source code), as well as with respect to the source code of third parties, including DX635
6 (Intel source code), and will cooperate to preserve the confidentiality of the source code.

7 5. The parties will not oppose each other's efforts to seal the record with respect to
8 license agreements, summaries of licensing terms, and royalty charts and will not oppose each
9 other's efforts to move to have these materials placed under seal. The parties will substitute
10 neutral, non-identifying designations (such as "Party A") for all third parties identified in such
11 licensing agreements, summaries or charts to the extent such third parties will not be the subject of
12 testimony. Nothing in this paragraph will limit a party's right to use information that is not under
13 seal. This paragraph applies only to:
14

- 15 a. PX76
- 16 b. PX77
- 17 c. PX81
- 18 d. PX82
- 19 e. DX630
- 20 f. DX631
- 21 g. DX757
- 22 h. DX758

23 6. PX25 (Summary of Apple's damages calculations) will be modified to:

24 a. Separate pages 18-21 into a new JX1500, which will show units and
25 revenues for each of the accused products on both sides, including the addition of the units and
26 revenues for the iPod Touch on what is now page 21. Separate totals for the number of units and
27
28

1 revenue that Samsung has accused will be added for each of iPhone, iPad and iPod Touch. Gross
 2 profit information for Samsung's accused products would be removed. Neither party will object to
 3 the admission of JX1500 into evidence. A copy of JX1500 is attached as Exhibit A to this
 4 stipulation;

5 b. Retain pages 1 (cover page), 3-8 (per product amounts), 17 (accused
 6 product carrier information), 24-29 (market share), 30 (Google document), 31-32 (capacity), and
 7 33 (reasonable royalty figures);

8 c. Remove pages 2 (summary of variables), 9-16 (detailed damages
 9 calculations), and 22-23 (iPhone and iPad LOB report); and

10 d The parties agree to support the filing under seal of pages 31-32 (capacity
 11 figures) and PX182 (capacity information). Such support would be without prejudice to
 12 Samsung's objections to the admission of the pages and of PX182 into evidence.
 13

14 e. A redacted revised copy of PX25 is attached as Exhibit B to this stipulation.
 15

16 7. Without waiving any objections to the admission of PX25, if PX25 is admitted,
 17 Samsung will not challenge a factual claim that the cost of goods sold figures used to calculate the
 18 profitability contained in PX25 derive from a financial spreadsheet that Samsung produced as
 19 SAMNDCA4875335.

20 8. Samsung will not object to the admission into evidence of PX28 (Summary of
 21 Samsung's fixed, variable, and non-product costs).
 22

23 9. Apple will not object to the admission into evidence of DX 704 and DX781.

24 10. Apple will permit Samsung to amend its proposed exhibit list to include a new
 25 proposed exhibit, DX783 (new Samsung Financial Schedule). Apple reserves its right to object to
 26 the admission of DX783 on any ground, including but not limited to lack of timeliness. A
 27 redacted copy of DX783 is attached as Exhibit C to this stipulation.
 28

1 11. Without waiving any objections to the admission of DX783, if DX783 is admitted,
2 Samsung will agree that the following are undisputed facts: "Defendants' Exhibit 781 and
3 Defendants' Exhibit 783 were prepared by Samsung's damages expert using the same source, a
4 spreadsheet prepared by Samsung, and reflect calculations of profitability for the same accused
5 products and the same time periods."
6

7 12. In the event that Samsung objects to the admission of current pages 3, 5-8 of PX25
8 (per product amounts) and any of pages 5-8 are excluded, Apple may introduce PX180 (Samsung
9 Financial Spreadsheet) without objection from Samsung. If Apple introduces PX180, Samsung
10 may introduce DX676 (Samsung Financial Spreadsheet) without objection from Apple.

11 13. Samsung may seek the admission of DX676 (Samsung Financial Spreadsheet) at its
12 own option without objection from Apple. If Samsung seeks the admission of DX676, Apple may
13 seek the admission of PX180 without objection from Samsung.
14

15 14. Except to the extent provided in paragraphs 1 through 13, neither party will seek to
16 admit the following documents as evidence:

- 17 a. PX29
- 18 b. PX102
- 19 c. PX103
- 20 d. PX180
- 21 e. PX181
- 22 f. DX541
- 23 g. DX542
- 24 h. DX543
- 25 i. DX544
- 26 j. DX755
- 27 k. DX756
- 28

1 l. DX676

2 m. DX777

3 n. DX778

4 o. DX779

5 p. DX780

6 15. Apple will not challenge the accuracy of the number of accused units used by
7 Dr. O'Brien and Dr. Teece for their royalty bases. Apple reserves all other rights to oppose or
8 challenge Dr. O'Brien's and Dr. Teece's methodology, calculations and damage award.
9

10 16. Nothing in this stipulation shall affect the rights of the parties to examine or cross
11 examine witnesses using designated confidential material which is subject to an obligation of
12 confidentiality (including material under seal by the Court) or other restriction on disclosure in
13 paragraphs 1 through 14 above, including, for example, material that may be the subject of expert
14 reports. However, in order to preserve the confidentiality of information, the parties agree that
15 designated confidential material (a) under seal or (b) specifically protected from disclosure above
16 will not be publicly disclosed. For the avoidance of doubt, "publicly disclosed" includes without
17 limitation display or recitation of the confidential material in open court or placing the confidential
18 material into evidence except under seal; however, confidential material presented to the Court,
19 jury, witnesses and/or opposing counsel only, without public display or recitation of the
20 confidential material, will not be considered "publicly disclosed" and such use will not affect the
21 confidential status of the information.
22

23 17. This stipulation shall apply only to the first trial of this dispute and any appeal
24 therefrom. It shall not apply to any subsequent trial.
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1 **IT IS SO STIPULATED.**

2 Dated: August 6, 2012

3 MORRISON & FOERSTER LLP

4 QUINN EMANUEL URQUHART &
5 SULLIVAN, LLP

6 By: /s/ Michael A. Jacobs

7 HAROLD J. MCELHINNY
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LLC.

ATTESTATION

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Joint Stipulation. 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

Pursuant to stipulation,

IT IS SO ORDERED.

Dated: _____, 2012

Honorable Lucy H. Koh
United States District Judge