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14 AMERICA, INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC
15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

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.
25

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S HIGH PRIORITY
OBJECTIONS TO TENTATIVE FINAL
JURY INSTRUCTIONS**

1 Samsung hereby submits its non-binding statement of the topics and jury instruction
2 numbers that will likely be the subject of Samsung's high priority objections to the Court's
3 Tentative Final Jury Instructions (Dkt. Nos. 1826-1828, 1838).

- 4 • **Instruction No. 21**—Samsung objects that these instructions fail to mention that the jury
5 must consider whether the baseband processor chips were actually delivered to Apple in
6 the United States to determine whether a sale was made in the United States.
- 7 • **Instruction No. 34.1**—Samsung objects that the instruction fails to inform the jury that
8 copying is not equivalent to infringement.
- 9 • **Instruction No. 39**—Samsung objects that the instruction as worded uses an incorrect
10 legal standard regarding functionality and fails to give the jury any guidance on how to
11 treat functional elements even if the design as whole is found non-functional.
- 12 • **Instruction No. 42**—Samsung objects that the instruction fails to accurately reflect the
13 law, including by not instructing that Apple may obtain Samsung's profits from sales of
14 products found to infringe Apple's design patents only to the extent that lost profits have
15 not been awarded on those sales. While Samsung maintains its objection that Apple is
16 required to elect between lost profits and infringer's profits as remedies, to the extent the
17 Court disagrees, it should add limiting language to Instruction No. 42 to make clear that
18 infringer's profits may only be awarded on infringing sales that are not already subject to a
19 lost profits remedy. Otherwise, there is a serious risk of double-counting.
- 20 • **Instruction Nos.40-43**—Samsung objects that the instruction as worded incorrectly
21 instructs the jury that it may award both lost profits and infringer's profits.
- 22 • **Instruction No. 51**—Samsung objects that the instruction as worded misstates Ninth
23 Circuit precedent concerning functionality.
- 24 • **Instruction No. 55**—Samsung objects that the instruction as worded includes language
25 that misstates the law regarding association and the weighing of the statutory factors to
26 assess dilution.
- 27 • **Missing Instruction**—Samsung objects that the instructions received thus far do not
28 include Samsung's proposed instruction No. 61.2 regarding statutory notice. (Dkt. No.
1818 p. 6). This instruction is derived from Ninth Circuit Model Instruction No. 15.24 and
should be given here.

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