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11 Attorneys for Plaintiff and  
 12 Counterclaim-Defendant APPLE INC.

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN JOSE DIVISION  
 17

18 APPLE INC., a California corporation,

19 Plaintiff,

20 v.

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

24 Defendants.  
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Case No. 11-cv-01846-LHK (PSG)

**APPLE'S STATEMENT AND  
 RESPONSE REGARDING  
 INFORMATION FOR DAMAGES  
 INSTRUCTIONS**

Date: August 20, 2012  
 Time: 12:00 p.m.  
 Place: Courtroom 1, 5th Floor  
 Judge: Hon. Lucy H. Koh

**STATEMENT AND RESPONSE**

1  
2 Apple respectfully submits this statement in response to the Court's Order Regarding  
3 Information for Damages Instructions dated August 19, 2012. (Dkt. No. 1851.)

4 Per the Court's request, Apple provides as Exhibit A hereto a chart indicating which types  
5 of damages (lost profits, reasonable royalties, or defendant's profits) Apple has sought for each  
6 intellectual property asset that has been asserted against Samsung. Apple has not included  
7 "reasonable royalty" under trade dress based on the tentative instructions provided by the Court  
8 last evening, but reserves its right to seek this remedy based on Apple's objection to the failure to  
9 include this instruction, which will be made during the charging conference.

10 Per the Court's request, Apple provides as Exhibit B hereto a color-coded chart with  
11 annotations intended to prevent the jury from improperly double-counting with respect to  
12 remedies. Apple provides this chart subject to the comments and objections discussed below.

13 Apple has already carefully tailored its damages summary (PX25A1 attached as Exhibit C  
14 hereto) to permit the calculation of damages without double counting. Pages 4 and 5 of PX25A1  
15 separately state the amounts that Apple is seeking in lost profits, Samsung's profits, and  
16 reasonable royalties for each accused product. Apple has also already provided a separate chart  
17 identifying the specific assets being asserted against each accused smartphone and tablet, both as  
18 page 3 of PX25A1 and in a separate submission after the close of evidence. (Dkt. No. 1823-1.)  
19 The calculations in PX25A1 were prepared in a manner to assure that no double counting  
20 occurred. (*See, e.g.*, Tr. at 2048-52 (Musika) & PDX36B.64 & 65, attached as Exhibit D hereto.)  
21 Moreover, the last page of PX25A1 provides per unit reasonable royalty amounts as determined  
22 by Mr. Musika. (Exhibit C at 16.) This information, when combined with Mr. Musika's  
23 calculation of Samsung's profit as 35.5% of revenue (Exhibit D at 2060) or Mr. Wagner's  
24 calculation of Samsung's profit as 12% of revenue (Exhibit E hereto, Tr. at 3065), together with  
25 Samsung's unit and revenue numbers in Joint Exhibit 1500 (Exhibit F), permit the jury to  
26 calculate Samsung's profits or reasonable royalties for a variety of circumstances. These already  
27 admitted exhibits are a vital part of the answer to the Court's questions. Notably, the materials in  
28 PX25A1 are presently substantially less detailed than they would have been due to the parties'

1 stipulation concerning damages documents and the related waiver of post-verdict challenges  
2 based on the sufficiency of the evidence. (Dkt. No. 1597.)

3 As Apple has already indicated in connection with its high priority objections to the  
4 Court's final jury instructions, damages must be evaluated at the level of the individual unit sale  
5 of the accused product. *See, e.g., Catalina Lighting, Inc. v. Lamps Plus, Inc.*, 295 F.3d 1277,  
6 1291 (Fed. Cir. 2002). While Apple cannot recover more than once with respect to any individual  
7 sale, Apple is entitled to seek alternative remedies for Samsung's infringing conduct. *See, e.g.,*  
8 *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1549 & 1554 (Fed Cir. 1995). This idea is itself  
9 incorporated into the Northern District's Patent Model Jury Instructions. *See* N.D. Cal. Model  
10 Patent Jury Instruction No. B.5.2.

11 Accounting for remedies at the level of the individual product sale is all that is required  
12 under 35 U.S.C. § 289 and *Catalina Lighting*. Thus, Apple objects to any requirement that it  
13 "elect" between lost profits, Samsung's profits, or reasonable royalties with respect to either  
14 specific assets or specific products. Such an election of remedies between 35 U.S.C. § 284 and  
15 35 U.S.C. § 289 deprives Apple of the opportunity to recover the full scope of its remedies for its  
16 other intellectual property and is highly likely to leave Apple without compensation for many  
17 infringing units.

18 If the Court nevertheless requires Apple, over its objection, to make an "election" under  
19 which it may seek only one form of remedy per accused product or IP asset, Apple will "elect" to  
20 recover Samsung's profits for all products for which that remedy is available. In practice, this  
21 means all items in the blue or green columns on Exhibit B to this submission will be subject to  
22 only a single finding of infringement or dilution by the jury, even though other remedies are  
23 presented in the alternative and would not result in impermissible double-counting.

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Dated: August 20, 2012

MORRISON & FOERSTER LLP

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

Attorneys for Plaintiff  
APPLE INC.