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11 Attorneys for Plaintiff and  
 Counterclaim-Defendant APPLE INC.

12  
 13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN JOSE DIVISION  
 16

17 APPLE INC., a California corporation,

18 Plaintiff,

19 v.

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

23 Defendants.  
 24

Case No. 11-cv-01846-LHK

**STATEMENT OF INSTRUCTIONS  
 LIKELY TO BE SUBJECT OF  
 APPLE'S HIGH PRIORITY  
 OBJECTIONS**

1 Pursuant to the Court's August 18, 2012 Order (Dkt. No. 1828) and the Court's  
2 August 19, 2012 Order (Dkt. No. 1838), Apple submits the following statement of the  
3 instructions that will likely be the subject of Apple's high priority objections.

- 4 • Tentative Proposed Instruction No. 14. Apple is likely to object to this instruction  
5 because Samsung should be barred by prosecution history estoppel from asserting the  
6 doctrine of equivalents for claim 1 of Samsung's '460 patent.
- 7 • Tentative Proposed Instruction No. 15.1. Apple is likely to object to the Court's inclusion  
8 of language regarding the ordering of steps in claim 1 of Samsung's '460 patent.
- 9 • Tentative Proposed Instruction No. 29. Apple is likely to object to the Court's inclusion  
10 of language relating to a lump-sum royalty, as well as its inclusion of language that the  
11 entire value of an accused product may be utilized as the royalty base even where the  
12 accused feature is not the reason for customer demand by utilizing a lower royalty rate.
- 13 • Tentative Proposed Instruction No. 34.1. Apple is likely to object to this instruction to the  
14 extent it suggests that deception or confusion is required to prove design patent  
15 infringement.
- 16 • Tentative Proposed Instruction No. 40. Apple is likely to object to the statement in this  
17 instruction that Apple must elect between the pursuit of compensatory damages or  
18 Samsung's profits for design patent infringement, and to request clarifying language that  
19 applies the limitation with respect to each sale as opposed to Apple's overall remedies.
- 20 • Tentative Proposed Instruction No. 48. Apple is likely to object to the portions of the  
21 instruction that suggest consumers should consider only non-functional aspects of a trade  
22 dress rather than the trade dress taken as a whole.
- 23 • Tentative Proposed Instruction No. 57. Apple is likely to object to the language in this  
24 instruction suggesting that trade dress infringement is assessed at the point of purchase,  
25 and to the failure of this instruction expressly to allow post-sale and initial interest  
26 confusion.
- 27 • Tentative Proposed Instruction No. 65. Apple is likely to object to this instruction to the  
28 extent that it does not include a statement of Apple's claim with respect to the relevant  
geographic market and Samsung's failure to introduce any evidence in the record, and to  
the extent that it does not adequately define the "practical test" for the relevant technology  
market.

23 Dated: August 19, 2012

MORRISON & FOERSTER LLP

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

26 Attorneys for Plaintiff  
27 APPLE INC.