

EXHIBIT P

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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.

Case No. 11-cv-01846-LHK

**REBUTTAL EXPERT REPORT
OF TERRY L. MUSIKA, CPA**

SUBJECT TO PROTECTIVE ORDER

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

1 39. The following table demonstrates by example Dr. O'Brien's illogical conclusions by showing the
 2 Samsung Feature Patents In Suit sorted by Dr. O'Brien's iPhone usage rate along with his
 3 corresponding iPhone damage claim:

4 Patent	5 Dr. O'Brien's Usage Percent for iPhones ²⁸	6 Dr. O'Brien's Damage Claim for iPhones ²⁹
7 '711	8 65.4%	9 \$4,769,990
'460	63.9%	\$11,007,551
'055	63%	\$375,000
'871	43.5%	\$5,742,382
'893	42.0%	\$3,063,296

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 12 Dr. O'Brien has Incorrectly Compared the Worldwide R&D for all SEC Products and Services to the
 13 Five Samsung Feature Patents In Suit

14 40. Dr. O'Brien states that "Samsung invests heavily in R&D and has an extensive patent portfolio."³⁰ He
 15 further states that "From 2005 through 2010 alone, Samsung invested more than \$35 billion in
 16 research and development."³¹ However, Dr. O'Brien fails to relate a single dollar of the claimed R&D
 17 to any of the Samsung Feature Patents In Suit. In fact two of the five Samsung Feature Patents In Suit
 18 were issued in 2006 and therefore bear no relationship to the R&D expenses incurred by Samsung in
 19 2007 through 2010.

20 41. More significantly, Dr. O'Brien's reference to \$35 billion in R&D expenses is from Samsung's
 21 Answer, Affirmative Defenses and Counterclaims which is for the entire worldwide operations of
 22 SEC that bear little to no direct relationship to the Samsung Feature Patents In Suit. The SEC
 23 worldwide numbers include R&D for all of Samsung's product lines including but not limited to
 24 televisions, Blu-ray players, 3D home-theater systems, laptops, printers, refrigerators, ovens, vacuum
 25

26 ²⁸ Expert Report of Vincent E. O'Brien, March 22, 2012, Table 4.

27 ²⁹ Expert Report of Vincent E. O'Brien, March 22, 2012, Table 9 and p. 22.

28 ³⁰ Expert Report of Vincent E. O'Brien, March 22, 2012, p. 4.

³¹ Expert Report of Vincent E. O'Brien, March 22, 2012, p. 4.

1 cleaners, smartphones, telecommunication systems, digital cameras and camcorders, semiconductors
 2 and TV panels.³² For example, in 2009 Samsung's total worldwide sales of Samsung products that
 3 embody the Samsung Feature Patents In Suit were \$1.8 billion.³³ Total sales in 2009 for SEC were
 4 \$119 billion.³⁴ Accordingly, Dr. O'Brien attempts to equate products that represent less than two
 5 percent of the sales to 100 percent of the corporate worldwide R&D expense.

6 42. Dr. O'Brien's failure to establish any causal connection or relationship of the worldwide SEC R&D
 7 to the Samsung Feature Patents In Suit in his determination of an appropriate reasonable royalty rate
 8 renders his conclusions unsupported, speculative and unreliable.

9 Dr. O'Brien's Criticism of Apple's License Production is Incorrect

10 43. I have been informed by counsel that Apple searched for and produced patent license agreements
 11 related to the accused iPhone, iPad, and iPod Touch products. However, Apple did not produce other
 12 non-patent types of agreements for which it pays royalties related to the accused products, such as
 13 copyright, trademark, software, and data licensing agreements. I understand that Samsung did not
 14 produce such non-patent agreements either. These other types of agreements account for the
 15 unproduced agreements from the royalty reports referenced by Dr. O'Brien.³⁵

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 _____
 23 ³² 2009 Samsung Electronics Annual Report, pp. 30-37.

24 ³³ SAMNDCA00376902 to SAMNDCA00377405 at SAMNDCA00376906. I have not included sales of additional products
 25 which embody the Samsung Feature Patents In Suit included in the file SAMNDCA00372946 because those sales take place after
 26 2009.

27 ³⁴ 2009 Samsung Electronics Annual Report, p. 44.

28 ³⁵ Expert Report of Vincent E. O'Brien, March 22, 2012, pp. 10-11.

³⁶ The Apple licenses are specifically listed in **Exhibit 3**.

³⁷ Binding Term Sheet between Apple Computer Inc. and Creative Technology LTD and Creative Labs, Inc., August 22, 2006
 (APLNDC-WH0000536155 to APLNDC-WH0000536171).

³⁸ Patent License Agreement between Nokia and Apple Inc., dated June 12, 2011 (APLNDC-X0000007220 to APLNDC-
 X0000007335).

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[REDACTED]

47. I am unaware of any financial, economic or other precedential basis wherein the reference of one patent to another patent within the patent text establishes an acceptable basis for the determination of a reasonable royalty rate. Even more significantly, the facts concerning the licensing of the '018

³⁹ Global Patent License Agreement between Apple Inc. and Telefonaktiebolaget L M Ericsson, dated January 14, 2008 (APLNDC-WH0000536194 to APLNDC-WH0000536213).
⁴⁰ Patent License Narrowband AMR and Wireband AMR Standards between Apple Computer, Inc. and VoiceAge Corporation and Nokia Corporation, June 3, 2003 (AppDel0158906 to AppDel0158943).
⁴¹ License Agreement between Audio MPEG, Inc., Societa' Italiana Per Lo Sviluppo Dell'Elettronica, S.I.SV.EL, S.P.A. and Apple Computer, Inc., July 1, 2005 (APLNDC-WH0000725229 to APLNDC-WH0000725257).
⁴² Software License Agreement between Audio MPEG, Inc., Societa' Italiana Per Lo Sviluppo Dell'Elettronica, S.I.SV.EL, S.P.A. and Apple Computer Inc., January 1, 2006 (APLNDC-WH0000725258 to APLNDC-WH0000725288).
⁴³ MPEG-4 Audio Patent License Agreement between Apple Computer, Inc. and Via Licensing Corporation, October 6, 2003 (APLNDC-WH0000725289 to APLNDC-WH0000725319).
⁴⁴ Expert Report of Vincent E. O'Brien, March 22, 2012, p. 12.

1 Features” with the Samsung Feature Patents In Suit, stating “The Feature Patents can be similar to the
2 ‘feature sets’ contained in this offer. This indicates that Apple would accept an offer from Samsung
3 for the Feature Patents of less than \$6 per phone and \$8 per tablet.”⁸¹ Dr. O’Brien’s characterization
4 of the October 2010 proposal and its relevance to a reasonable royalty calculation are unsupported
5 and illogical. First, the document to which Dr. O’Brien refers states that Apple offered Samsung a
6 license to a portfolio of Apple patents for \$30 per unit for phones and \$40 per unit for tablets, but was
7 willing to offer Samsung a 20% discount, if Samsung refrained from using Apple “Proprietary
8 Features”; the document does not indicate that Apple offered to license its proprietary features for \$6
9 per phone and \$8 per tablet.⁸² Second, Dr. O’Brien provides no explanation for his conclusion that the
10 offer of a discount for not practicing Apple’s patents has any bearing on the appropriate license rate
11 for the five Samsung Feature Patents In Suit nor is there any such basis for comparison. Dr. O’Brien
12 presents no evidence that any patent in the portfolio of Apple “Proprietary Features,” let alone all of
13 the patents in the portfolio, provide similar features to the Samsung Feature Patents In Suit. Thus the
14 October 2010 presentation cited by Dr. O’Brien provides no support for his contentions concerning
15 the reasonable royalty rate for the Samsung Feature Patents In Suit.

16 69. Accordingly, Dr. O’Brien’s conclusions based on his mistaken understanding are incorrect and
17 unreliable.

18 **K. POSSIBLE REVISIONS TO THIS REPORT**

19 70. In Dr. O’Brien’s analysis of *Georgia-Pacific* Factor 2, he references a dispute in the discovery
20 process between Apple and Samsung relating to licensing. For the purposes of my report, I have
21 assumed that the parties have produced all relevant license agreements and royalty reports. If
22 additional information becomes available, I will supplement my analysis and conclusions if asked to
23 do so.

24 71. I also intend to review and consider any other additional information provided to me after the
25 production of this report and will supplement my analysis and conclusions if asked to do so.

27 ⁸¹ Expert Report of Vincent E. O’Brien, March 22, 2012, pp. 17-18.

28 ⁸² APLNDC00010886 to APLNDC00010917 at APLNDC00010900.

1 **L. EXHIBITS**

2 72. Exhibits 4 through 10 are attached to this report and support my analyses and opinions in this
3 matter.

4 **M. PROFESSIONAL ARRANGEMENT**

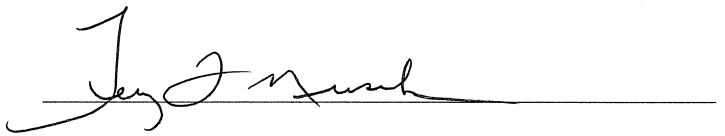
5 73. My work for expert services provided in this matter is charged at a standard billing rate of \$550 per
6 hour and is in no way contingent on the outcome of this matter. In addition, I will be reimbursed for
7 all reasonable out-of-pocket expenses incurred in connection with my analyses and testimony in this
8 case.

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April 16, 2012



Terry L. Musika, CPA

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