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 12 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC.

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 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
 22 ELECTRONICS AMERICA, INC., a New
 York corporation; and SAMSUNG
 23 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 24 Defendants.

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

**[PROPOSED] ORDER GRANTING
 APPLE'S MOTION FOR
 JUDGMENT AS A MATTER OF
 LAW (RENEWED), NEW TRIAL,
 AND AMENDED JUDGMENT
 [CORRECTED]**

1 Before the Court is the Motion for Judgment as a Matter of Law (Renewed), New Trial,
2 and Amended Judgment brought by Plaintiff Apple Inc. (“Apple”) against Defendants Samsung
3 Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications
4 America, Inc. (collectively “Samsung”).

5 WHEREAS the Court concludes based on the trial record and submissions of the parties
6 that the evidence permits only one reasonable conclusion as to the following:

- 7 • Apple’s unregistered iPad/iPad 2 Trade Dress is protectable;
- 8 • Apple’s unregistered iPad/iPad 2 Trade Dress was famous as of June 2011;
- 9 • the Samsung’s Galaxy Tab 10.1 (WiFi) and Galaxy Tab 10.1 (4G LTE) infringe
10 Apple’s unregistered iPad/iPad 2 Trade Dress;
- 11 • the Samsung’s Galaxy Tab 10.1 (WiFi) and Galaxy Tab 10.1 (4G LTE) dilute
12 Apple’s unregistered iPad/iPad 2 Trade Dress;
- 13 • the Samsung’s Galaxy Tab 10.1 (WiFi) and Galaxy Tab 10.1 (4G LTE) infringe
14 U.S. Design Patent No. 504,889 (D’889 patent);
- 15 • the Samsung Galaxy Ace phone infringes U.S. Design Patent No. 618,677 (D’677
16 patent);
- 17 • the Samsung Galaxy S II (AT&T, i9100, Epic 4G Touch, and Skyrocket) and
18 Infuse 4G phones infringe U.S. Design Patent No. 593,087 (D’087 patent);
- 19 • the Samsung Captivate, Continuum, Droid Charge, Epic 4G, Galaxy Prevail,
20 Galaxy S II (AT&T, i9100, T-Mobile, Epic 4G Touch, and Skyrocket), and Infuse
21 4G phones dilute Apple’s registered iPhone Trade Dress (U.S. Trademark
22 Registration No. 3,470,983);
- 23 • the Samsung Captivate, Continuum, Droid Charge, Epic 4G, Galaxy Prevail,
24 Galaxy S II (AT&T, i9100, T-Mobile, Epic 4G Touch, and Skyrocket), and Infuse
25 4G phones dilute Apple’s unregistered iPhone 3G Trade Dress;
- 26 • Apple’s unregistered combination iPhone Trade Dress is protectable;
- 27 • Apple’s unregistered combination iPhone Trade Dress was famous as of July
28 2010;

- 1 • each accused Samsung smartphone product dilutes Apple's unregistered
- 2 combination iPhone Trade Dress;
- 3 • the Samsung Galaxy Ace, Intercept, and Replenish phones infringe claim 8 of U.S.
- 4 Patent No. 7,844,915 ('915 patent);
- 5 • the Samsung Captivate, Continuum, Gem, Indulge, Intercept, Nexus S 4G,
- 6 Transform, and Vibrant phones infringe claim 50 of U.S. Patent No. 7,864,163
- 7 ('163 patent);
- 8 • Samsung's infringement of the D'087 patent was willful;
- 9 • Samsung's infringement of the D'889 patent was willful;
- 10 • Samsung's dilution of Apple's unregistered combination iPhone Trade Dress was
- 11 willful;
- 12 • Samsung's dilution of Apple's unregistered iPad/iPad 2 Trade Dress was willful;
- 13 • Samsung's infringement of Apple's unregistered iPad/iPad 2 Trade Dress was
- 14 willful;
- 15 • Samsung Electronics Co. (SEC) took action with respect to the Samsung Intercept
- 16 and Replenish phones that it knew or should have known would induce STA or
- 17 SEA to infringe the '915 patent;
- 18 • Samsung Electronics Co. (SEC) took action with respect to the Samsung Captivate,
- 19 Continuum, Gem, Indulge, Intercept, Nexus S 4G, Transform, and Vibrant phones
- 20 that it knew or should have known would induce STA or SEA to infringe the '163
- 21 patent;
- 22 • Samsung Electronics Co. (SEC) took action with respect to the Samsung Galaxy S
- 23 II (AT&T, Epic 4G Touch, and Skyrocket), and Infuse 4G phones that it knew or
- 24 should have known would induce STA or SEA to infringe the D'087 patent;
- 25 • Samsung Electronics Co. (SEC) took action with respect to the Samsung Galaxy
- 26 Tab 10.1 (WiFi) and Galaxy Tab 10.1 (4G LTE) that it knew or should have
- 27 known would induce STA or SEA to infringe the D'889 patent;
- 28 • Claim 10 of Samsung's U.S. Patent No. 7,456,893 ('893 patent) is invalid;

- 1 • Claim 9 of Samsung's U.S. Patent No. 7,698,711 ('711 patent) is invalid;
- 2 • Claim 1 of Samsung's U.S. Patent No. 7,577,460 ('460 patent) is invalid;
- 3 • Claims 15 and 16 of Samsung's U.S. Patent No. 7,447,516 ('516 patent) are
- 4 invalid;
- 5 • Claims 10 and 15 of Samsung's U.S. Patent No. 7,675,941 ('941 patent) are
- 6 invalid;
- 7 • Samsung breached its contractual obligations to timely disclose its declared-
- 8 essential '516 and '941 patents as required by the ETSI IPR policy;
- 9 • Samsung breached its contractual obligations to license its declared-essential '516
- 10 and '941 patents on FRAND terms;
- 11 • Samsung violated Section 2 of the Sherman Act;
- 12 • Apple proved actual damages of \$365,000 with respect to its breach of contract
- 13 counterclaims;
- 14 • Apple proved actual damages of \$365,000 with respect to its antitrust
- 15 counterclaims, which amounts to \$1,095,000 in damages when trebled pursuant to
- 16 15 U.S.C. § 15;

17 WHEREAS, in the alternative, the Court concludes based on the trial record and
18 submissions of the parties that the jury was incorrectly instructed on the D'889's claim
19 construction and on design patent infringement, which prejudiced Apple on its claim that
20 Samsung's Galaxy Tab 10.1 (WiFi) and Galaxy Tab 10.1 (4G LTE) infringe the D'889 patent;

21 WHEREAS the jury's award of \$1,049,349,540 to Apple for Samsung's infringing and
22 diluting sales only includes such sales through June 30, 2012;

23 WHEREAS the Court concludes that supplemental damages are warranted, and that such
24 damages should be calculated based on the jury's damages award, the undisputed information of
25 actual past unit sales, and estimates of future unit sales based thereon; and

26 WHEREAS the Court concludes that prejudgment interest is warranted, and that such
27 interest should be calculated based on the prime rate of 3.25%, compounded annually;

1 Accordingly, having considered the verdict of the jury and the papers submitted, and good
2 cause having been shown, IT IS HEREBY ORDERED:

3 A. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
4 that Apple's unregistered iPad/iPad 2 Trade Dress is protectable, or in the alternative, a new trial
5 is granted because the jury's finding is against the clear weight of the evidence.

6 B. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
7 that Apple's unregistered iPad/iPad 2 Trade Dress is famous, or in the alternative, a new trial is
8 granted because the jury's finding is against the clear weight of the evidence.

9 C. Judgment as a matter of law is granted in favor of Apple, and against Samsung
10 Electronics Co. and Samsung Electronics America, Inc., that Samsung's Galaxy Tab 10.1 (WiFi)
11 infringes Apple's unregistered iPad/iPad 2 Trade Dress, or in the alternative, a new trial is granted
12 because the jury never reached the issue of likelihood of confusion.

13 D. Judgment as a matter of law is granted in favor of Apple, and against Samsung
14 Electronics Co. and Samsung Telecommunications America, LLC, that Samsung's Galaxy Tab
15 10.1 (4G LTE) infringes Apple's unregistered iPad/iPad 2 Trade Dress, or in the alternative, a
16 new trial is granted because the jury never reached the issue of likelihood of confusion.

17 E. Judgment as a matter of law is granted in favor of Apple, and against Samsung
18 Electronics Co. and Samsung Electronics America, Inc., that Samsung's Galaxy Tab 10.1 (WiFi)
19 dilutes Apple's unregistered iPad/iPad 2 Trade Dress, or in the alternative, a new trial is granted
20 because the jury never considered whether there was a likelihood of dilution.

21 F. Judgment as a matter of law is granted in favor of Apple, and against Samsung
22 Electronics Co. and Samsung Telecommunications America, LLC, that Samsung's Galaxy Tab
23 10.1 (4G LTE) dilutes Apple's unregistered iPad/iPad 2 Trade Dress, or in the alternative, a new
24 trial is granted because the jury never considered whether there was a likelihood of dilution.

25 G. Judgment as a matter of law is granted in favor of Apple, and against Samsung
26 Electronics Co. and Samsung Electronics America, Inc., that the Galaxy Tab 10.1 (WiFi)
27 infringes U.S. Design Patent No. 504,889 (D'889 patent), or in the alternative, a new trial is
28 granted because the jury's finding is against the clear weight of the evidence and the jury was

1 erroneously instructed on the D'889's claim construction and design patent infringement, which
2 prejudiced Apple.

3 H. Judgment as a matter of law is granted in favor of Apple, and against Samsung
4 Electronics Co. and Samsung Telecommunications America, LLC, that Samsung's Galaxy Tab
5 10.1 (4G LTE) infringes the D'889 patent, or in the alternative, a new trial is granted because the
6 jury's finding is against the clear weight of the evidence and the jury was erroneously instructed
7 on the D'889's claim construction and design patent infringement, which prejudiced Apple.

8 I. Judgment as a matter of law is granted in favor of Apple, and against Samsung
9 Electronics Co., that the Samsung Galaxy Ace phone infringes U.S. Design Patent No. 618,677
10 (D'677 patent).

11 J. Judgment as a matter of law is granted in favor of Apple, and against Samsung
12 Electronics Co. and Samsung Telecommunications America, LLC, that the Samsung Galaxy S II
13 (AT&T, Epic 4G Touch, and Skyrocket) and Infuse 4G phones infringe U.S. Design Patent No.
14 593,087 (D'087 patent).

15 K. Judgment as a matter of law is granted in favor of Apple, and against Samsung
16 Electronics Co., that the Samsung Galaxy S II (i9100) phone infringes U.S. Design Patent No.
17 593,087 (D'087 patent).

18 L. Judgment as a matter of law is granted in favor of Apple, and against Samsung
19 Electronics Co. and Samsung Telecommunications America, LLC, that the Samsung Captivate,
20 Continuum, Droid Charge, Epic 4G, Galaxy Prevail, Galaxy S II (AT&T, T-Mobile, Epic 4G
21 Touch, and Skyrocket), and Infuse 4G phones dilute Apple's registered iPhone Trade Dress (U.S.
22 Trademark Registration No. 3,470,983).

23 M. Judgment as a matter of law is granted in favor of Apple, and against Samsung
24 Electronics Co., that the Samsung Galaxy S II (i9100) phone dilutes Apple's registered iPhone
25 Trade Dress (U.S. Trademark Registration No. 3,470,983).

26 N. Judgment as a matter of law is granted in favor of Apple, and against Samsung
27 Electronics Co. and Samsung Telecommunications America, LLC, that the Samsung Captivate,
28

1 Continuum, Droid Charge, Epic 4G, Galaxy Prevail, Galaxy S II (AT&T, T-Mobile, Epic 4G
2 Touch, and Skyrocket), and Infuse 4G phones dilute Apple's unregistered iPhone 3G Trade Dress.

3 O. Judgment as a matter of law is granted in favor of Apple, and against Samsung
4 Electronics Co., that the Samsung Galaxy S II (i9100) phone dilutes Apple's unregistered iPhone
5 3G Trade Dress.

6 P. Judgment as a matter of law is granted in favor of Apple, and against Samsung
7 Electronics Co. and Samsung Telecommunications America, LLC, that Apple's unregistered
8 combination iPhone Trade Dress is protectable, or in the alternative, a new trial is granted
9 because the jury's finding is against the clear weight of the evidence.

10 Q. Judgment as a matter of law is granted in favor of Apple, and against Samsung
11 Electronics Co. and Samsung Telecommunications America, LLC, that Apple's unregistered
12 combination iPhone Trade Dress is famous or in the alternative, a new trial is granted because the
13 jury's finding is against the clear weight of the evidence.

14 R. Judgment as a matter of law is granted in favor of Apple, and against Samsung
15 Electronics Co. and Samsung Telecommunications America, LLC, that each accused Samsung
16 smartphone product dilutes Apple's unregistered combination iPhone Trade Dress, or in the
17 alternative, a new trial is granted because the jury never considered whether there was a
18 likelihood of dilution.

19 S. Judgment as a matter of law is granted in favor of Apple, and against Samsung
20 Electronics Co. and Samsung Telecommunications America, LLC, that the Samsung Intercept
21 and Replenish phones infringe claim 8 of U.S. Patent No. 7,844,915 ('915 patent).

22 T. Judgment as a matter of law is granted in favor of Apple, and against Samsung
23 Electronics Co., that the Samsung Galaxy Ace phone infringes claim 8 of the '915 patent.

24 U. Judgment as a matter of law is granted in favor of Apple, and against Samsung
25 Electronics Co. and Samsung Telecommunications America, LLC, that the Samsung Captivate,
26 Continuum, Gem, Indulge, Intercept, Nexus S 4G, Transform, and Vibrant phones infringe claim
27 50 of U.S. Patent No. 7,864,163 ('163 patent).

1 V. Judgment as a matter of law is granted in favor of Apple, and against Samsung
2 Electronics Co. and Samsung Telecommunications America, LLC, that Samsung's infringement
3 of the D'087 patent was willful.

4 W. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
5 that Samsung's infringement of the D'889 patent was willful.

6 X. Judgment as a matter of law is granted in favor of Apple, and against Samsung
7 Electronics Co. and Samsung Telecommunications America, LLC, that Samsung's dilution of
8 Apple's unregistered combination iPhone Trade Dress was willful.

9 Y. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
10 that Samsung's dilution of Apple's unregistered iPad/iPad 2 Trade Dress was willful.

11 Z. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
12 that Samsung's infringement of Apple's unregistered iPad/iPad 2 Trade Dress was willful.

13 AA. Judgment as a matter of law is granted in favor of Apple, and against Samsung
14 Electronics Co., that Samsung Electronics Co. took action with respect to the Samsung Intercept
15 and Replenish phones that it knew or should have known would induce Samsung Electronics
16 America, Inc. or Samsung Telecommunications America, LLC to infringe the '915 patent.

17 BB. Judgment as a matter of law is granted in favor of Apple, and against Samsung
18 Electronics Co., that Samsung Electronics Co. took action with respect to the Samsung Captivate,
19 Continuum, Gem, Indulge, Intercept, Nexus S 4G, Transform, and Vibrant phones that it knew or
20 should have known would induce Samsung Electronics America, Inc. or Samsung
21 Telecommunications America, LLC to infringe the '163 patent.

22 CC. Judgment as a matter of law is granted in favor of Apple, and against Samsung
23 Electronics Co., that Samsung Electronics Co. took action with respect to the Samsung Galaxy S
24 II (AT&T, Epic 4G Touch, and Skyrocket), and Infuse 4G phones that it knew or should have
25 known would induce Samsung Electronics America, Inc. or Samsung Telecommunications
26 America, LLC to infringe the D'087 patent.

27 DD. Judgment as a matter of law is granted in favor of Apple, and against Samsung
28 Electronics Co., that Samsung Electronics Co. took action with respect to the Samsung Galaxy
[PROPOSED] ORDER GRANTING MOTION FOR JUDGMENT AS A MATTER OF LAW (RENEWED),
NEW TRIAL, AND AMENDED JUDGMENT
CASE NO. 11-CV-01846-LHK (PSG)
sf- 3197100

1 Tab 10.1 (WiFi) and Galaxy Tab 10.1 (4G LTE) that it knew or should have known would induce
2 Samsung Electronics America, Inc. or Samsung Telecommunications America, LLC to infringe
3 the D'889 patent.

4 EE. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
5 that claim 10 of Samsung's U.S. Patent No. 7,456,893 ('893 patent) is invalid.

6 FF. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
7 that claim 9 of Samsung's U.S. Patent No. 7,698,711 ('711 patent) is invalid.

8 GG. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
9 that claim 1 of Samsung's U.S. Patent No. 7,577,460 ('460 patent) is invalid.

10 HH. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
11 that claims 15 and 16 of Samsung's U.S. Patent No. 7,447,516 ('516 patent) are invalid.

12 II. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
13 that claims 10 and 15 of Samsung's U.S. Patent No. 7,675,941 ('941 patent) are invalid.

14 JJ. Judgment as a matter of law is granted in favor of Apple, and against Samsung,
15 that Samsung breached its contractual obligations to timely disclose its patents as required by the
16 ETSI IPR policy and to license its declared-essential patents on FRAND terms.

17 KK. Judgment as a matter of law is granted in favor of Apple that Samsung violated
18 Section 2 of the Sherman Act.

19 LL. Judgment as a matter of law is granted in favor of Apple that Samsung owes
20 damages of \$1,095,000 collectively on Apple's breach of contract and antitrust counterclaims.

21 MM. Samsung is ordered to pay Apple supplemental damages of \$121,098,389 through
22 December 31, 2012, with an additional \$516,197 in supplemental damages for each additional
23 day prior to entry of judgment; prejudgment interest of \$49,868,289 through December 31, 2012,
24 with an additional \$108,658 in prejudgment interest for each additional day prior to entry of
25 judgment; and \$1,095,000 collectively in damages on Apple's breach of contract and antitrust
26 counterclaims.

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IT IS SO ORDERED.

Dated: _____, 2012

HONORABLE LUCY H. KOH
United States District Judge