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 12 Attorneys for Plaintiff and
 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 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 (PSG)

**APPLE'S OPPOSITION TO
 SAMSUNG'S RENEWED
 APPLICATION TO DISSOLVE
 GALAXY TAB 10.1
 PRELIMINARY INJUNCTION**

1 Apple opposes Samsung's renewed application to dissolve the Galaxy Tab 10.1
2 preliminary injunction (Dkt. No. 2007), because Apple's recently-filed motion for permanent
3 injunction and JMOL support continuation of the injunction based on (1) the jury verdict that the
4 Tab 10.1 willfully infringes Apple's '381, '915, and '163 patents; and (2) JMOL that the Tab 10.1
5 infringes the D'889 patent, and also infringes and dilutes Apple's iPad/iPad 2 trade dress rights.

6 The Federal Circuit remanded the appeal so that this Court could consider "Samsung's
7 motion and *Apple's arguments in opposition thereto.*" (Dkt. No. 2007-1 at 3 (emphasis added).)
8 The Federal Circuit emphasized that it "takes no position on the proceedings the trial court should
9 employ in considering the motion to dissolve the preliminary injunction or on the merits of the
10 motion." (*Id.* at 3.) Thus, the Federal Circuit expressly left it for this Court to decide both the
11 timing of its ruling (*i.e.*, whether to decide Samsung's motion now or to wait until the December
12 6 hearing on Apple's permanent injunction and JMOL motions) and the content of its ruling.

13 On September 17, 2012, this Court stated in its Order Denying Without Prejudice
14 Samsung's Motion to Dissolve the June 26, 2012 Preliminary Injunction and Issuing Indicative
15 Ruling that "based on the post-trial motions, the Court could, potentially, issue a permanent
16 injunction on the Galaxy Tab 10.1." (Dkt. No. 1968 at 4.) That conclusion is reinforced by
17 Apple's permanent injunction and JMOL motions, which Apple filed four days later on
18 September 21. Apple demonstrated that the jury verdict that Samsung has willfully infringed
19 Apple's '381, '915, and '163 patents by marketing the Galaxy Tab 10.1 (Wi-Fi) entitles Apple to
20 a permanent injunction against that product because (1) Samsung's infringing sales impose
21 irreparable harm on Apple; (2) the evidence shows a sufficient nexus between irreparable harm
22 and the patented features; and (3) the balance of hardships and public interest both favor an
23 injunction. (Dkt. No. 1982-1 at vi, 1-11.)

24 Apple also demonstrated that JMOL should be granted that the Galaxy Tab 10.1 infringes
25 the D'889 patent because (1) the only reasonable conclusion from the evidence is that the Tab
26 10.1 looks substantially the same as the D'889 design, as indicated by this Court's prior finding
27 of likely infringement and the Federal Circuit's denial of Samsung's appeal of that finding; and
28 (2) Samsung's argument that the Tab 10.1 does not infringe because it does not have a highly

1 polished or reflective back was based on the erroneous claim construction that the D'889 patent
2 requires a highly polished or reflective back. (Dkt. No. 1989 at 7-11.) Apple further
3 demonstrated that JMOL should be granted that Apple's iPad/iPad 2 trade dress is protectable and
4 famous, and that the Galaxy Tab 10.1 infringes and dilutes this trade dress. (*Id.* at 2-7.)

5 Apple's September 21 filing of its permanent injunction and JMOL motions is a
6 significant new development that enables this Court to assess the merits of Apple's arguments. If
7 Apple prevails on any of its permanent injunction or JMOL arguments related to the Tab 10.1, the
8 preliminary injunction should be sustained, not dissolved. Indeed, in the context of the
9 preliminary injunction, it is sufficient for Apple to show that it is likely to prevail on its
10 arguments. Apple is very likely to prevail in obtaining a permanent injunction, in view of the
11 jury's verdict that Samsung is willfully infringing Apple's three utility patents. Apple is also
12 likely to obtain JMOL on the Tab 10.1 for the reasons set forth in Apple's motion. Thus, if this
13 Court chooses to address the merits of Samsung's motion now, the motion should be denied.

14 Given that JMOL and permanent injunction motions have already been filed and that
15 oppositions are due in just three weeks, Apple believes that the more logical course is for the
16 Court to decide all issues of injunctive relief (including Samsung's motion to dissolve and
17 Apple's motion for a permanent injunction) at the same time that it decides the related JMOL
18 motions. Samsung cannot show any urgent need to decide its motion first, given that Samsung
19 has admitted that the injunction will not cause significant harm because Samsung is already
20 selling a successor product and the Tab 10.1 is nearing the end of its product life. (Dkt. No. 1171
21 at 11.) Finally, Samsung's motion, which seeks equitable relief, must be judged in the context
22 of the jury's verdict on all patents: Samsung asks the Court to permit it to reinject into the
23 market, in what would indisputably be an act of willful infringement, a product that has now been
24 found to infringe three different Apple patents.

25 Accordingly, Apple respectfully requests that the Court either deny Samsung's motion to
26 dissolve the Tab 10.1 preliminary injunction, or defer ruling on Samsung's motion until the
27 arguments in Apple's permanent injunction and JMOL motions that support continuation of the
28 injunction have been briefed and considered by this Court. Apple also requests that if the Court is

