

# **EXHIBIT 16**

**FILED UNDER SEAL**

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755 PAGE MILL ROAD  
PALO ALTO  
CALIFORNIA 94304-1018  
TELEPHONE: 650.813.5600  
FACSIMILE: 650.494.0792  
WWW.MOFO.COM

MORRISON & FOERSTER LLP  
NEW YORK, SAN FRANCISCO,  
LOS ANGELES, PALO ALTO,  
SACRAMENTO, SAN DIEGO,  
DENVER, NORTHERN VIRGINIA,  
WASHINGTON, D.C.  
TOKYO, LONDON, BRUSSELS,  
BEIJING, SHANGHAI, HONG KONG

February 12, 2012

Writer's Direct Contact  
650.813.5718  
MPernick@mofocom

Via E-Mail (rachelkassabian@quinnemanuel.com)

Rachel Herrick Kassabian  
Quinn Emanuel  
555 Twin Dolphin Drive, Fifth Floor  
Redwood Shores, CA 94065

Re: *Apple v. Samsung*, Case No. 11-cv-1846-LHK (PSG) (N.D. Cal.)  
**Subject to Protective Order—Contains Samsung AEO Information**

Dear Rachel:

I wrote to you on February 10, 2012 regarding the many ways in which Samsung's production of financial materials did not comply with the Court's January 27, 2012 Order. This letter, by contrast, concerns another way in which Samsung's production of financial documents remains deficient. This also follows up on Erik Olson's January 27<sup>th</sup> letter, and my letters of February 1<sup>st</sup> and February 4<sup>th</sup>. Despite our repeated inquiries, Samsung still will not provide us with direct and clear answers to the questions that persist about Samsung's inadequate document productions.

To recap, Mr. Olson wrote to you on January 27<sup>th</sup> (following the deposition of STA's controller Tim Sheppard) and identified 21 specific categories of financial and damages-related documents that Samsung has failed to produce. Mr. Olson's letter and my February 1<sup>st</sup> letter asked whether Samsung would remedy the deficiencies in its production and produce the materials identified by Mr. Olson's letter. In response, all Samsung has said—repeatedly—is that we should check Samsung's production. There are two problems with this.

First, Samsung's refusal to state whether it will produce the requested materials is improper. As explained below, the categories identified by Mr. Olson correspond to Apple document requests. Rule 34 of the Federal Rules of Civil Procedure requires Samsung to provide a response about what it will and will not produce. Apple does not have to rummage through Samsung's production and attempt to divine what categories of materials Samsung is willing to produce. However, Samsung's responses—both in its formal written discovery responses, and in your letters to us—fail to state the scope of Samsung's production.

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Second, although we have already told Samsung this, I confirm that, after diligent review, we have not been able to locate the documents that we specified in Mr. Olson's January 27<sup>th</sup> letter within Samsung's February 3<sup>rd</sup> production. Samsung's refusal to produce these materials needs to be remedied right away.

Samsung's specific response regarding each of the categories from Mr. Olson's January 27<sup>th</sup> letter is long overdue. We sent you that letter more than two weeks ago. And, of course, these documents are encompassed in Apple document requests that were propounded many months ago.

Accordingly, before Tuesday's lead counsel meet-and-confer session, please provide us with your answer as to whether Samsung will produce each category of documents from our January 27<sup>th</sup> letter. For each category where Samsung refuses production, please state why they will not be produced. For each category where Samsung will produce the documents, please confirm that they will be produced by **February 17, 2012**.

To the extent there are any lingering issues here, we will expect to resolve them with you at Tuesday's lead counsel meeting. These issues have been on the table for a long time. If you would like to discuss them live before Tuesday, please let me know a good time for a phone call. I would be happy to discuss this with you.

For your convenience, I am also providing a table below that shows how each of the categories from Mr. Olson's January 27<sup>th</sup> letter maps to Apple requests for production. You have asked that we give you specifics, and we wanted to address your request. (Please note that, with a few limited exceptions—which are marked with \*\*\* below—these categories of documents are covered by the Court's January 27<sup>th</sup> Order, and should also have been produced by Samsung in response to the Order. My February 10<sup>th</sup> letter addresses that problem with Samsung's production.)

Sincerely,

*/s/ Marc J. Pernick*

Marc J. Pernick

cc: Samuel Maselli  
S. Calvin Walden  
Peter Kolovos

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<b>Document Category for which Samsung has not produced documents</b>	<b>Apple Requests for Production Covering Document Category</b>
<p>Monthly, quarterly, and annual <i>internal</i> financial statements for STA, SEA, and SEC including balance sheets, income statements, and profit and loss statements for the years 2009-2011.</p>	<p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p> <p>For each Product at Issue, documents that tie to the general ledger and show, by each product style or product identifier and each quarter: (1) gross revenues; (2) net revenues; (3) quantity sold; (4) average selling price; (5) cost of goods sold; and (6) any marketing expenses specifically attributed to the Product at issue. <b>(RFP 261, served on 10/26/2011)</b></p>
<p>Monthly, quarterly and annual income statement and balance sheet “flux analysis” documents for STA, SEA and SEC for the years 2009-2011.</p>	<p>All Documents reflecting or referring to the incremental profit or economic value from the sale or marketing of the Products at Issue, including any effort to calculate contribution margin, operating margin, incremental margin or margin profit from the sale of the Products at Issue or the line of Products at Issue. <b>(RFP 264, served on 10/26/2011)</b></p> <p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p>
<p>Monthly close reports for STA and SEA for 2009 to 2011. (RFP 261, 265-266.)</p>	<p>For each Product at Issue, documents that tie to the general ledger and show, by each product style or product identifier and each quarter: (1) gross revenues; (2) net revenues; (3) quantity sold; (4) average selling price; (5) cost of goods sold; and (6) any marketing expenses specifically attributed to the Product at issue. <b>(RFP 261, served on 10/26/2011)</b></p>

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Document Category for which Samsung has not produced documents	Apple Requests for Production Covering Document Category
	<p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p> <p>All Documents showing the actual costs and projected costs associated with each Product at Issue, including the research, development, design, engineering, manufacturing, importation, and marketing costs. <b>(RFP 266, served on 10/26/2011)</b></p>
<p>A report tied to SAP reflecting U.S. wireless terminal sales <u>for the company as a whole</u> and by accused product (SKU) broken down <u>by customer</u>, and by month in quantity and dollars, from 2009 to the present.<sup>1</sup></p>	<p>Documents sufficient to show, by month, the volume of sales in the United States, in units, of each of the Products at Issue on a product-by-product basis. <b>(RFP 41, served on 08/03/2011)</b></p> <p>For each Product at Issue, documents sufficient to show (a) the style, model number, trade name, or any other product identifier of each product; (b) the dates of manufacture of each product; (c) the name of the entity or entities responsible for the design and manufacture of each product; (d) the starting and ending dates of sale of each product; (e) the total sales (by unit and dollar amount) of each product; (f) the unit cost during each year it was sold; (g) the unit sales price during each year it was sold; (h) the incremental gross profit attributable to the sale or other conveyance; (i) the operating profit attributable to the sale or other conveyance; and (k) the names of the persons who approved the selection, design, sale, use, and/or adoption of the product. <b>(RFP 260, served on 10/26/2011)</b></p> <p>For each Product at Issue, documents that tie to the general ledger and show, by each product style or product identifier and each quarter: (1) gross revenues; (2) net revenues; (3) quantity sold; (4) average selling price; (5) cost of goods sold; and (6) any marketing expenses specifically attributed to the Product at issue. <b>(RFP 261, served on 10/26/2011)</b></p>

<sup>1</sup> On February 3, Samsung produced SAMNDCA00323946. The document is inadequate for the reasons stated in the February 10 letter.

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Document Category for which Samsung has not produced documents	Apple Requests for Production Covering Document Category
	All weekly, monthly, quarterly, or other periodic reports concerning the development, testing, sale, distribution, marketing, manufacturing, licensing, use or commercialization of any Product at Issue. <b>(RFP 293, served on 10/26/2011)</b>
Report of STA and SEA tablet U.S. sales in total and by accused product (SKU), broken down by customer and by month in quantity and dollars, from 2009 to the present.	Documents sufficient to show, by month, the volume of sales in the United States, in units, of each of the Products at Issue on a product-by-product basis. <b>(RFP 41, served on 08/03/2011)</b>  All weekly, monthly, quarterly, or other periodic reports concerning the development, testing, sale, distribution, marketing, manufacturing, licensing, use or commercialization of any Product at Issue. <b>(RFP 293, served on 10/26/2011)</b>
*** Documents, reports or communications from SEC showing STA's and SEA's consolidated profits or profit targets for the companies as a whole and for any classification that includes products as used for purposes of measuring performance in MBOs or other management incentives.	All Documents reflecting or referring to the incremental profit or economic value from the sale or marketing of the Products at Issue, including any effort to calculate contribution margin, operating margin, incremental margin or margin profit from the sale of the Products at Issue or the line of Products at Issue. <b>(RFP 264, served on 10/26/2011)</b>  All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b>
*** Any documents reflecting MBO targets that refer to the profitability of any accused products.	All Documents reflecting or referring to the incremental profit or economic value from the sale or marketing of the Products at Issue, including any effort to calculate contribution margin, operating margin, incremental margin or margin profit from the sale of the Products at Issue or the line of Products at Issue. <b>(RFP 264, served on 10/26/2011)</b>

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<b>Document Category for which Samsung has not produced documents</b>	<b>Apple Requests for Production Covering Document Category</b>
	<p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p> <p>All Documents concerning Samsung's business model with respect to the Products at Issue, including any revenue model, marketing strategy, distribution model, costs, licensing strategies, and financial projection relating to the Products at Issue. <b>(RFP 276, served on 10/26/2011)</b></p>
<p>The STA Business Plan for 2012 (and all drafts).</p>	<p>All documents sufficient to show each of Your sales forecasts for each of the Products at Issue. <b>(RFP 28, served on 08/03/2011)</b></p> <p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2012)</b></p> <p>All Documents concerning Samsung's business model with respect to the Products at Issue, including any revenue model, marketing strategy, distribution model, costs, licensing strategies, and financial projection relating to the Products at Issue. <b>(RFP 276, served on 10/26/2012)</b></p> <p>All Documents showing the actual costs and projected costs associated with each Product at Issue, including the research, development, design, engineering, manufacturing, importation, and marketing costs. <b>(RFP 266, served on 10/26/2011)</b></p>

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Document Category for which Samsung has not produced documents	Apple Requests for Production Covering Document Category
<p>Any document reflecting a forecast for sales of accused products as used to prepare or to implement the STA Business Plan for 2012.</p>	<p>All documents sufficient to show each of Your sales forecasts for each of the Products at Issue. <b>(RFP 28, served on 08/03/2011)</b></p> <p>All Documents that reflect or refer to any projections of sales, cost of goods sold, pricing, and quantity to be shipped for any of the Products at Issue. <b>(RFP 263, served on 10/26/2011)</b></p> <p>All Documents concerning Samsung's business model with respect to the Products at Issue, including any revenue model, marketing strategy, distribution model, costs, licensing strategies, and financial projection relating to the Products at Issue. <b>(RFP 276, served on 10/26/2011)</b></p>
<p>Monthly reports on performance against STA's Business Plan including any reports following the format of the STA Business Plan but showing actual and forecasted results, by month and by year from 2009 to the present.</p>	<p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p> <p>All Documents concerning Samsung's business model with respect to the Products at Issue, including any revenue model, marketing strategy, distribution model, costs, licensing strategies, and financial projection relating to the Products at Issue. <b>(RFP 276, served on 10/26/2011)</b></p>
<p>"Pumi" reports or alternately-named equivalent reports (including all parts of such reports that reflect quarterly sales, unit volumes, revenue forecasts, and a calculation of profits by product) from 2009 to the present.</p>	<p>All documents sufficient to show each of Your sales forecasts for each of the Products at Issue. <b>(RFP 28, served on 08/03/2011)</b></p> <p>For each Product at Issue, documents that tie to the general ledger and show, by each product style or product identifier and each quarter: (1) gross revenues; (2) net revenues; (3) quantity sold; (4) average selling price; (5) cost of goods sold; and (6) any marketing expenses specifically attributed to the Product at issue. <b>(RFP 261, served on 10/26/2011)</b></p>



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Document Category for which Samsung has not produced documents	Apple Requests for Production Covering Document Category
	<p>All Documents that reflect or refer to any projections of sales, cost of goods sold, pricing, and quantity to be shipped for any of the Products at Issue. <b>(RFP 263, served on 10/26/2011)</b></p> <p>All Documents reflecting or referring to the incremental profit or economic value from the sale or marketing of the Products at Issue, including any effort to calculate contribution margin, operating margin, incremental margin or margin profit from the sale of the Products at Issue or the line of Products at Issue. <b>(RFP 264, served on 10/26/2011)</b></p> <p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p>
<p>Any communication that accompanies the transmission of "Pumi" reports from SEC to STA or SEA.</p>	<p>All Documents that reflect or refer to any projections of sales, cost of goods sold, pricing, and quantity to be shipped for any of the Products at Issue. <b>(RFP 263, served on 10/26/2011)</b></p> <p>All Documents reflecting or referring to the incremental profit or economic value from the sale or marketing of the Products at Issue, including any effort to calculate contribution margin, operating margin, incremental margin or margin profit from the sale of the Products at Issue or the line of Products at Issue. <b>(RFP 264, served on 10/26/2011)</b></p> <p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p>

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Document Category for which Samsung has not produced documents	Apple Requests for Production Covering Document Category
<p>Spreadsheets with the unit, revenue and market share data that underlies the weekly sales reports presentations in the format of Exhibit No. 1246.</p>	<p>All documents created within the last five years relating to Samsung's actual or projected smartphone market share. <b>(RFP 9, served on 08/03/2011)</b></p> <p>All documents created within the last five years relating to Samsung's actual or projected tablet computer market share. <b>(RFP 10, served on 08/03/2011)</b></p> <p>Documents sufficient to show, by month, the volume of sales in the United States, in units, of each of the Products at Issue on a product-by-product basis. <b>(RFP 41, served on 08/03/2011)</b></p> <p>All Documents created within the last five years relating to Samsung's actual or projected smartphone market share. <b>(RFP 208, served on 10/26/2011)</b></p> <p>All Documents created between 2008 and the present relating to Samsung's expansion of its U.S. market share for smartphones and tablet computers. <b>(RFP 210, served on 10/26/2011)</b></p>
<p>All information submitted to IRS in compliance with STA and SEA's Advance Pricing Agreement (Exhibit No. 1247), including all "Annual Reports" and quarterly reports.</p>	<p>For each Product at Issue, documents that tie to the general ledger and show, by each product style or product identifier and each quarter: (1) gross revenues; (2) net revenues; (3) quantity sold; (4) average selling price; (5) cost of goods sold; and (6) any marketing expenses specifically attributed to the Product at issue. <b>(RFP 261, served on 10/26/2011)</b></p> <p>All Documents relating to how Samsung accounts for revenue and expenses of the Products at Issue, including any accounting policies, internal controls, internal manuals or other accounting documents that describe how revenue, cost of goods sold, and sales, general or administrative expenses related to any Product at Issue should be recorded and reported. <b>(RFP 262, served on 10/26/2011)</b></p> <p>All Documents reflecting or referring to the incremental profit or economic value from the sale or marketing of the Products at Issue, including any effort to calculate contribution margin, operating margin, incremental margin or margin profit from the sale of the Products at Issue or the line of Products at Issue. <b>(RFP 264, served on 10/26/2011)</b></p>

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Document Category for which Samsung has not produced documents	Apple Requests for Production Covering Document Category
	<p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p>
<p>All information submitted to IRS as part renegotiation/renewal of Advance Pricing Agreement.</p>	<p>For each Product at Issue, documents that tie to the general ledger and show, by each product style or product identifier and each quarter: (1) gross revenues; (2) net revenues; (3) quantity sold; (4) average selling price; (5) cost of goods sold; and (6) any marketing expenses specifically attributed to the Product at issue. <b>(RFP 261, served on 10/26/2011)</b></p> <p>All Documents relating to how Samsung accounts for revenue and expenses of the Products at Issue, including any accounting policies, internal controls, internal manuals or other accounting documents that describe how revenue, cost of goods sold, and sales, general or administrative expenses related to any Product at Issue should be recorded and reported. <b>(RFP 262, served on 10/26/2011)</b></p> <p>All Documents reflecting or referring to the incremental profit or economic value from the sale or marketing of the Products at Issue, including any effort to calculate contribution margin, operating margin, incremental margin or margin profit from the sale of the Products at Issue or the line of Products at Issue. <b>(RFP 264, served on 10/26/2011)</b></p> <p>All Documents reflecting or relating to any actual or projected Samsung revenue and profits in connection with any sales, licenses or any other activity relating to the Products at Issue, including profit and loss statements, income statements, any other financial statements or projections, and documents that describe, analyze or comment on such actual or projected revenues and profits. <b>(RFP 265, served on 10/26/2011)</b></p>

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Document Category for which Samsung has not produced documents	Apple Requests for Production Covering Document Category
<p>*** Complete STA and SEA chart of accounts (listing of the general ledger account in the SAP system for STA or SEA).</p>	<p>All Documents relating to how Samsung accounts for revenue and expenses of the Products at Issue, including any accounting policies, internal controls, internal manuals or other accounting documents that describe how revenue, cost of goods sold, and sales, general or administrative expenses related to any Product at Issue should be recorded and reported. <b>(RFP 262, served on 10/26/2011)</b></p>
<p>All reimbursement or cost-sharing agreements between SEC and STA or SEA, e.g. the agreement that provides for SEC's reimbursement of all R&amp;D expenses incurred by or at STA.</p>	<p>All Documents showing the actual costs and projected costs associated with each Product at Issue, including the research, development, design, engineering, manufacturing, importation, and marketing costs. <b>(RFP 266, served on 10/26/2011)</b></p>
<p>All documents or information provided to or submitted to SEC to obtain cost plus 5% reimbursement by SEC or R&amp;D expenses from 2009 to the present.</p>	<p>All Documents showing the actual costs and projected costs associated with each Product at Issue, including the research, development, design, engineering, manufacturing, importation, and marketing costs. <b>(RFP 266, served on 10/26/2011)</b></p> <p>All Documents reflecting or relating to any actual or projected revenue, gross margin, cost of goods sold, and/or any measure of profit obtained by Samsung in connection with or derived from any products or services marketed, sold or offered for sale by Samsung in conjunction with the sale, offer for sale, distribution or use of the Products at Issue. <b>(RFP 278, served on 10/26/2011)</b></p>