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16 AMERICA, INC. and SAMSUNG  
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17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19 APPLE INC., a California corporation,

20 Plaintiff,

21 vs.

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

26 Defendants.

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S CORRECTED  
OPPOSITION TO APPLE'S  
ADMINISTRATIVE MOTION FOR  
LEAVE TO FILE APPLE'S BRIEF IN  
RESPONSE TO SAMSUNG'S REQUEST  
FOR ADDITIONAL DEPOSITIONS**

1 Samsung respectfully opposes Apple's Motion for Leave to File Apple's Brief in Response  
2 to Samsung's Request for Additional Depositions (Dkt. 2100). Samsung's conditional request to  
3 depose Apple's post-trial experts if Apple is permitted to depose Samsung's was a fair and fitting  
4 rejoinder to Apple's motion, and it was properly raised in response to Apple's original motion.  
5 Nor can Apple plausibly claim it was unable to anticipate such a counterpoint and would have  
6 addressed it in its motion. Under the Court's Order that granted Apple's motion to shorten (Dkt.  
7 2085), there is no occasion now for further briefing by Apple.

8 In any event, considering Apple's proposed brief (Dkt. 2100-1) will not change the result.  
9 While seeking to avail itself of post-trial discovery at the eleventh hour, Apple insists it should be  
10 a one-way street and would unfairly deny Samsung the same opportunity. Apple does not  
11 dispute that this Court's Orders (or even Apple's own prior proposals) never contemplated post-  
12 trial discovery. Nor does Apple dispute that it introduced new experts and new expert testimony  
13 post-trial without affording Samsung the discovery it now seeks from Samsung. Instead, Apple  
14 purports to fault Samsung for what Apple calls "cho[o]s[ing] not to ask for any" depositions and  
15 Samsung's "strategic choice" not to use the fruit of any expert discovery in its briefing. (Dkt.  
16 2100-1 at 1-2). That characterization is outlandish. All Samsung did was abide by this Court's  
17 Orders, which afforded no such choice to either party. To the extent Apple would nonetheless  
18 conjure such choice for itself, fairness requires that Samsung receive equal treatment.

19 Apple charges Samsung with "deliberately conceal[ing] from the Court that Ms. Robinson  
20 works at Invotex with Mr. Musika". Far from being concealed, it was "a fact that is clearly  
21 reflected in her declaration" (Dkt. 2100-1 at 1). Nor is it relevant to whether she should be  
22 deposed if the Court orders post-trial expert depositions. Samsung appropriately focused on the  
23 pertinent fact that Ms. Robinson is a new, undisclosed expert whose qualifications and analytics  
24 Samsung has never been permitted to test by deposition. Although Apple attributes her  
25 testimony to Mr. Musika, that does nothing to address the deposition issue. Ms. Robinson's  
26 working with another expert is scarcely a substitute for a deposition of her as to her previously  
27 undisclosed work. And, even more importantly substantively, Apple fails to address Ms.  
28 Robinson's disconnects and inconsistencies with Mr. Musika that Samsung has separately noted

1 (Dkt. 2054 at 29). While Apple raises the unfortunate circumstances of Mr. Musika's illness, it  
 2 offers no reason whatsoever why it could not and should not have offered *Ms. Robinson* for  
 3 deposition had it envisioned expert discovery. With respect to Mr. Musika himself, Samsung  
 4 would accommodate any reasonable arrangements on a deposition necessitated by his illness.  
 5 Apple has not presented any basis that would justify a categorical refusal to present Mr. Musika  
 6 for deposition on his most recent declaration. As for Mr. Schiller and Dr. Winer, Apple attempts  
 7 no reconciliation whatsoever of their new declarations as contrasted with their prior testimony.<sup>1</sup>

8 Finally, Apple's protestations of delay ring hollow. Samsung made its conditional  
 9 request one day after Apple filed its motion seeking post-trial depositions – and before any ruling  
 10 by this Court was made and before any post-trial deposition has been taken. For its part, Apple  
 11 knew for weeks that the Court's August 28 Order did not allow for post-trial depositions, and it  
 12 waited almost two months to make its request. As soon as Apple proposed to the Court a change  
 13 in the rules – which indisputably did not contemplate post-trial discovery – Samsung promptly and  
 14 timely asserted its reasonable position that any such discovery should be reciprocal.

15 For the foregoing reasons, Samsung respectfully requests that the Court deny Apple's  
 16 Administrative Motion for Leave to File Apple's Brief in Response to Samsung's Request for  
 17 Additional Depositions or, if the brief is allowed, that the Court deny Apple's motion to compel  
 18 further depositions, or allow any such discovery to be reciprocal, on the terms previously set forth  
 19 in Samsung's proposed Order.

20 DATED: October 29, 2012 QUINN EMANUEL URQUHART & SULLIVAN, LLP

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<sup>1</sup> Contrary to Apple's brief (at 1:24-25), Samsung did point out these inconsistencies in its October 19 opposition (Dkt. 2054 at 8 n.7).