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CO., LTD., SAMSUNG ELECTRONICS  
14 AMERICA, INC. and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC  
15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

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

**SAMSUNG'S ADMINISTRATIVE  
REQUEST FOR LEAVE TO FILE: (A)  
DECLARATION OF ALBERT P.  
BEDECARRÉ IN SUPPORT OF  
SAMSUNG'S OPPOSITION TO APPLE'S  
MOTION FOR A PERMANENT  
INJUNCTION AND DAMAGES  
ENHANCEMENT AND SAMSUNG'S  
OPPOSITION TO APPLE'S MOTION  
FOR JUDGMENT AS A MATTER OF  
LAW, NEW TRIAL AND AMENDED  
JUDGMENT; AND (B) MANUAL FILING  
NOTIFICATION FOR EXHIBITS 1 AND 2  
TO DECLARATION OF ALBERT P.  
BEDECARRÉ**

1 Pursuant to Civil Local Rules 7-3(d) and 7-11, Samsung respectfully requests leave to file:  
2 (i) the Declaration of Albert P. Bedecarré in Support of Samsung's Opposition to Apple's Motion  
3 for a Permanent Injunction and Damages Enhancement and Samsung's Opposition to Apple's  
4 Motion for Judgment as a Matter of Law, New Trial and Amended Judgment; and (ii) a Manual  
5 Filing Notification for Exhibits 1 and 2 to Declaration of Albert P. Bedecarré in Support of  
6 Samsung's Opposition to Apple's Motion for a Permanent Injunction and Damages Enhancement  
7 and Samsung's Opposition to Apple's Motion for Judgment as a Matter of Law, New Trial and  
8 Amended Judgment. These pleadings are attached as Exhibit 1 and 2 respectively to this  
9 Administrative Request. The purpose of this filing is simply to provide the Court with  
10 production models of the grey design-around versions of the Galaxy S II (T-Mobile) (SGH-T989)  
11 and Galaxy S II Epic 4G Touch (SPH-D710) phones that are discussed in detail in Samsung's  
12 Opposition to Apple's Motion for a Permanent Injunction ("Injunction Opposition") and  
13 Samsung's Opposition to Apple's Motion for Judgment as a Matter of Law, New Trial and  
14 Amended Judgment ("New Trial Opposition") now that these devices are available for filing with  
15 the Court.

16 After being informed of the grey design-around phones and provided access to inspect and  
17 photograph the devices, Apple filed its Reply in Support of Motion for a Permanent Injunction and  
18 for Damages Enhancements in which it criticized Samsung's argument that the design-around grey  
19 versions of the phones do not infringe the D'677 patent. Dkt. No. 2127-2 at 9, fn. 5. Given  
20 there is a dispute regarding the design-around versions of these phones, the Court should have  
21 access to production models of the phones before the upcoming hearing.

22 The design-around phones that are the subject of this request are well known to Apple.  
23 Samsung's Injunction Opposition (Dkt. No. 2054), the Declaration of Sam Luente in Support of  
24 Samsung's Opposition (Dkt. No. 2057) and Samsung's New Trial Opposition (Dkt. No. 2053)  
25 included detailed discussion of Samsung's manufacturing of design-around versions of the Galaxy  
26 S II (T-Mobile) (SGH-T989) and Galaxy S II Epic 4G Touch (SPH-D710) containing a front face  
27 with a light metallic grey mask. Samsung's expert, Mr. Luente, stated in his declaration that he

1 analyzed samples of these two phones, and opined that they did not infringe the D'677 patent.  
2 Dkt. No. 2057 at ¶¶ 16-21. The phones that Mr. Lucente reviewed were a production model of  
3 the grey version of the Galaxy S II (T-Mobile) (SGH-T989) and a mockup of the grey version of  
4 the Galaxy S II Epic 4G Touch (SPH-D710), made up of production components and the new light  
5 metallic grey mask. Declaration of Albert P. Bedecarré in Support of Administrative Motion for  
6 Leave to File: (A) Declaration of Albert P. Bedecarré in Support of Samsung's Opposition to  
7 Apple's Motion for a Permanent Injunction and Damages Enhancement and Samsung's  
8 Opposition to Apple's Motion for Judgment as a Matter of Law, New Trial and Amended  
9 Judgment; and (B) Manual Filing Notification for Exhibits 1 and 2 to Declaration of Albert P.  
10 Bedecarré, dated November 13, 2012 ("Bedecarré Admin. Decl.") ¶ 2. These were the only grey  
11 design-around versions of these phones in Samsung's counsel's possession when it filed its  
12 Injunction Opposition and New Trial Opposition because Samsung had not yet begun commercial  
13 production and additional samples were not yet available to counsel. Bedecarré Admin. Decl., ¶  
14 3.

15 Apple also had the opportunity to inspect the design-around phones before submitting its  
16 reply briefs. Instead of filing the design-around phones with its opposition briefs, Samsung's  
17 counsel kept them so they could be made available to Apple for inspection while Samsung's  
18 counsel simultaneously worked to obtain production samples to provide to Apple and the Court.  
19 Bedecarré Admin. Decl., ¶¶ 3, 6, 8. Samsung made the two devices that Mr. Lucente reviewed  
20 available to Apple, and Apple's counsel inspected them on October 26, 2012 and October 30,  
21 2012. During the October 30 inspection, two photographers took photos of the devices for  
22 approximately three hours. Bedecarré Admin. Decl. ¶¶ 4-5. On November 6, 2012, Apple  
23 deposed Samsung's expert, Mr. Lucente, regarding his declaration and the physical phones that he  
24 reviewed. Bedecarré Admin. Decl. ¶¶ 6-7. The two phones he reviewed were marked as  
25 Exhibits 1 and 2 to Mr. Lucente's deposition, and Apple introduced photographs of the grey  
26 versions of the phones taken on October 30 as exhibits to the Lucente deposition. Bedecarré  
27 Admin. Decl. ¶ 7.

1           Although Samsung tried to obtain a production model of the Galaxy S II Epic 4G Touch  
2 (SPH-D710) before Mr. Lucente's deposition, the shipment was delayed due to an error by the  
3 shipping company. Bedecarré Admin. Decl. ¶ 6. After obtaining production models of the  
4 Galaxy S II Epic 4G Touch (SPH-D710) for the first time and receiving two additional production  
5 copies of the Galaxy S II (T-Mobile) (SGH-T989), Samsung asked Apple to stipulate that they  
6 could be filed with the Court and provided Apple's counsel with production copies of the phones.  
7 Bedecarré Admin. Decl. ¶¶ 8-10.

8           In its Injunction Reply, Apple has challenged Samsung's claim that the design-around  
9 versions of the Galaxy S II (T-Mobile) (SGH-T989) and Galaxy S II Epic 4G Touch (SPH-D710)  
10 do not infringe the D'677 patent. Dkt. No. 2127-2 at 9, fn. 5. And Apple has submitted  
11 deposition testimony from Mr. Lucente referring to the phones that were marked as Exhibits 1 and  
12 2 at Mr. Lucente's deposition along with its reply papers. Dkt. No. 2127-22 at 6-14. Samsung  
13 should be allowed to make copies available for the Court to review when assessing the arguments  
14 regarding these phones. Apple's sole argument in opposition to this motion is a claim that  
15 briefing on its motion is complete and the record is closed. Bedecarré Admin. Decl. ¶ 9, Exh. 1.  
16 This claim is not supported by any authority and makes no sense given Apple itself has submitted  
17 deposition testimony with its Injunction Reply that refers to the grey design-around phones.  
18 Moreover, as this Court previously held, it should have a full record before it when deciding  
19 Apple's Motion for a Permanent Injunction given Apple is seeking to permanently enjoin the sale  
20 of 26 Samsung products. (Dkt. 2093, at 2). No prejudice to Apple is possible under these  
21 circumstances because Apple had access to the phones before submitting its reply briefs and had a  
22 full opportunity to submit its arguments about them. As a result, Samsung's request for leave  
23 should be granted.

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DATED: November 13, 2012

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