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SAMSUNG ELECTRONICS CO., LTD.,  
6 SAMSUNG ELECTRONICS AMERICA, INC.,  
and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 APPLE INC., a California corporation,

12 Plaintiff,

13 vs.

14 SAMSUNG ELECTRONICS CO., LTD., a  
Korean business entity; SAMSUNG  
15 ELECTRONICS AMERICA, INC., a New  
York corporation; SAMSUNG  
16 TELECOMMUNICATIONS AMERICA, LLC,  
a Delaware limited liability company,

17 Defendants.  
18

CASE NO. 11-cv-01846-LHK (PSG)

**MOTION TO COMPEL PRODUCTION  
OF SETTLEMENT AGREEMENT WITH  
HTC**

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1 **PRELIMINARY STATEMENT**

2 Apple should be compelled to produce a copy of its recently announced license with HTC.  
 3 According to published reports, on November 11, 2012 Apple and HTC entered into a broad  
 4 license that settles all litigation between them. Apple’s settlement agreement with HTC is highly  
 5 relevant to Apple’s injunction request. It is almost certain that the license agreement covers at  
 6 least some of the patents in suit, including the ‘915 and ‘381 patents on which Apple seeks a  
 7 permanent injunction in this case. If so, this would be highly relevant, for evidence of Apple’s  
 8 licensing of patents-in-suit weighs against any finding that monetary relief is inadequate by  
 9 demonstrating Apple’s willingness to forego exclusivity in exchange for money. Dkt. 2054, at 17.  
 10 Evidence of Apple’s licensing of these patents would also undermine Apple’s assertion in its  
 11 reply—made only a day before announcement of the HTC license—that its patents are unavailable  
 12 for licensing to competitors. Dkt. 2127-2 at 7:21-22. Apple should be ordered to produce this  
 13 license agreement.

14 Federal Rule of Civil Procedure 16(b)(4) authorizes modifications to the schedule on a  
 15 showing of good cause, and Apple recently invoked this Rule in support of its request for  
 16 depositions in connection with its injunction motion. Dkt. 2082. Good cause exists here, because  
 17 Samsung immediately requested the discovery that is the subject of this Motion. Moreover, the  
 18 discovery is central to Samsung’s response to Apple’s request for an injunction and damages. As  
 19 a result, the Court should order production of Apple’s license with HTC.

20 **ARGUMENT**

21 **I. The Court Should Compel Production of the HTC Agreement**

22 As Apple has argued, and Judge Grewal recognized, Federal Rule of Civil Procedure  
 23 16(b)(4) authorizes this Court to permit discovery upon a showing of “good cause.” Dkt. 2082;  
 24 Dkt. 2105. “The focus of the good cause inquiry in the Rule 16(b) context is the diligence of the  
 25 party seeking the modification . . . .” Dkt. 2105, at 3. Here, Samsung promptly requested the  
 26 HTC license agreement from Apple. Crone Decl., Ex. 1.

27 Moreover, the recently announced HTC license agreement directly relates to the issues  
 28 raised by Apple’s Motion for a Permanent Injunction. According to published reports, the “broad

1 ten-year licensing agreement . . . settles all of the lawsuits between the companies around the  
 2 world” and “covers current and future patents for both firms.” Crone Decl., Ex. 2. Apple’s legal  
 3 disputes with HTC included some of the patents that are the subject of Apple’s injunction motion,  
 4 including the ‘381 and ‘915 patents. *Id.*, Ex. 3. It is almost certain that the HTC license  
 5 agreement covers these two patents, which makes it directly relevant to Apple’s injunction  
 6 requests. The announced license also appears to fundamentally conflict with Apple’s assertion in  
 7 its reply brief that these patents are “unavailable for licensing, particularly to competitors” and that  
 8 the alleged harms “cannot be fully compensated through money damages.” Dkt. 2127-2 at 7;  
 9 Dkt. 1982-1, at 9. To the contrary, Apple’s apparent willingness to license these patents supports  
 10 Samsung’s argument that Apple cannot show irreparable harm because monetary damages are  
 11 adequate. Dkt. 2054 at 7 (citing this Court’s injunction rulings in this case and *Apple II*). Indeed,  
 12 this Court has previously placed reliance on Apple’s licensing practices in assessing Apple’s  
 13 request for an injunction. Dkt. 449 at 64. Accordingly, the Court should compel Apple to produce  
 14 this license for Samsung’s review.

15           Demonstrating the merit of Samsung’s request for the HTC license, on November 16,  
 16 2012, Apple told Samsung that it “intends to produce the HTC agreement” but must give HTC 10  
 17 business days’ notice pursuant to the terms of the license agreement. Crone Decl., Ex. 1. But  
 18 Apple refused to enter into a binding stipulation confirming that it will produce the license  
 19 agreement, stating that HTC may object to the production. *Id.* As this Court has previously  
 20 recognized, relevant documents cannot be withheld simply because a third party objects.  
 21 (Dkt. 867 (ordering Apple to produce documents which Apple withheld on the basis that required  
 22 third party consent had not been obtained).) The protective order adequately protects any  
 23 concerns that HTC may have regarding the production of the license. *Id.* at 12:13-15 (“the court  
 24 sees no reason that the protective order in this case is inadequate to protect third-party  
 25 confidentiality interests”). The Court should compel the immediate production of this agreement.

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