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

25 Defendants.  
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CASE NO. 11-cv-01846-LHK

**SAMSUNG'S STATEMENT OF NON-  
OPPOSITION TO APPLE'S  
ADMINISTRATIVE MOTION FOR  
LEAVE TO FILE RESPONSES TO  
SAMSUNG'S OBJECTIONS TO APPLE'S  
REPLY EVIDENCE AND SAMSUNG'S  
RESPONSE TO APPLE'S OBJECTIONS**

1 **Statement of Non-Opposition**

2 On November 26, 2012, Apple filed an Administrative Motion for Leave to File Response  
3 to Samsung's Objections to Apple's Reply Evidence. Samsung does not oppose Apple's  
4 Administrative Motion provided it is given an opportunity to respond to Apple's Objections to  
5 New Evidence Submitted with Samsung's Reply in Support of Judgment as a Matter of Law, New  
6 Trial, and/or Remittitur filed November 16, 2012. Its response is below. If Apple is permitted to  
7 respond to Samsung's objections, Samsung should be afforded the same opportunity to respond to  
8 Apple's objections.

9 **Response to Apple's Objections, Filed November 16, 2012**

10 Samsung hereby responds to Apple's Objections to New Evidence Submitted with  
11 Samsung's Reply in Support of Judgment as a Matter of Law, New Trial, and/or Remittitur, dated  
12 November 16, 2012 as follows:

13 Apple objected to Exhibits 13 to 15 to the Declaration of Susan Estrich in Support of  
14 Samsung's Motion for Judgment as a Matter of Law, New Trial and/or Remittitur Pursuant to  
15 Federal Rules of Civil Procedure 50 and 59; Samsung's Opposition to Apple Inc.'s Motion for  
16 Judgment as a Matter of Law (Renewed), New Trial, and Amended Judgment [FRCP 50, 59]; and  
17 Samsung's Opposition to Apple's Motion for a Permanent Injunction and Damages Enhancements  
18 ("Estrich Declaration"). These exhibits consist of excerpts from the November 5, 2012 deposition  
19 of Apple's expert Marylee Robinson, the November 6, 2012 deposition of Apple's expert Russell  
20 Winer and the November 2, 2012 deposition of Apple's Senior Vice President of Worldwide  
21 Marketing, Phillip Schiller. Each of these three witnesses submitted a declaration along with  
22 Apple's Motion for a Permanent Injunction and Damages Enhancement and Ms. Robinson's  
23 declaration was also submitted in support of Apple's claims for supplemental damages and  
24 prejudgment interest in connection with its Motion for Judgment as a Matter of Law (Renewed),  
25 New Trial and Amended Judgment [FRCP 50, 59].

26 Given the importance of deciding this motion on a full record and because the deposition  
27 testimony from these three witnesses has direct bearing on the issues before the Court, this

1 evidence should be allowed into the record. Dkt. 2093 at 2 (“...Apple is seeking to permanently  
2 enjoin the sale of 26 Samsung products. Such an extraordinary request should be evaluated in  
3 light of the full available record.”) Samsung could not have submitted this testimony earlier or  
4 discussed it in its oppositions to Apple's briefs because the depositions did not commence until  
5 two weeks after Samsung filed its opposition briefs. The deposition testimony is directly relevant  
6 to the pending motions. Ms. Robinson's testimony demonstrates that the patented features do not  
7 drive demand and that any changes in market share are not attributable to the protectable features  
8 of Apple's products. (Dkt. 2126-13). Samsung has also submitted testimony from Ms. Robinson  
9 regarding Apple's claims for damages enhancements and supplemental damages. (Dkt. 2126-13,  
10 Dkt. 2054 at 5-9, 22-28, Dkt. 2053 at 24-29). The deposition testimony of Mr. Winer supports  
11 Samsung's arguments that the patented features do not drive consumers to purchase Samsung  
12 phones and tablets, that Apple has not lost any sales due to Samsung's alleged infringement and  
13 that Apple's brand has not been diluted by Samsung's alleged infringement. (Dkt. 2126-14; Dkt.  
14 2054 at 5-9). And the testimony Samsung submitted from Mr. Schiller also demonstrates that the  
15 patented features do not drive consumer demand. (Dkt. 2126-15; Dkt. 2054 at 5-6, 10-12).

16 In light of their content, these deposition excerpts are also admissible under the Court's  
17 prior Order for corroboration purposes. (Dkt. 1945 at 3). Excerpts from all three depositions  
18 corroborate Samsung's position in its Opposition to Apple's Motion for Permanent Injunction that  
19 the features at issue do not drive consumer demand. (Dkt. 2054 at 5-6, 10-12; Dkt. 1945 at 3  
20 (noting that “supporting documentation shall be for corroboration purposes...”). Mr. Winer's  
21 testimony regarding lost sales and brand dilution corroborates positions taken in Samsung's  
22 Opposition to Apple's Motion for Permanent Injunction and Damages Enhancements. (Dkt. 2054  
23 at 5-9). Ms. Robinson's testimony supports Samsung's position that Apple's supplemental  
24 damages calculations were based on inaccurate sales projections, as reflected in Samsung's  
25 Opposition to Apple's Motion for Judgment as a Matter of Law, New Trial, and Amended  
26 Judgment. (Dkt. 2053 at 26-28). Ms. Robinson's testimony also supports Samsung's position that  
27 Apple's calculation of its requested enhancements is flawed, which is set forth in Samsung's

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1 Opposition to Apple's Motion for Permanent Injunction and Damages Enhancements. (Dkt. 2053  
2 at 27-29).

3 Apple also objects to exhibit 12 to the Estrich Declaration—a November 9, 2012 Judgment  
4 from the England and Wales Court of Appeal in the litigation between Apple and Samsung.  
5 Samsung could not have filed this Judgment with its opposition briefs because the briefs were  
6 filed before the Judgment issued. The Judgment is pertinent to Apple's claim that its reputation  
7 has been harmed by Samsung because Apple's failure to comply with valid Court orders is an  
8 independent reason its brand has been tarnished.

9 Apple next contests the meaning of six lines of Ms. Robinson's deposition cited in  
10 Samsung's Reply in Support of Motion for Judgment as a Matter of Law, New Trial, and/or  
11 Remittitur. (Dkt. 2131). This is a substantive argument and not an objection to the admission of  
12 this evidence. Regardless, Samsung's statement that Apple does not dispute the validity of  
13 Samsung's explanation of how the jury reached its damages awards is supported by the cited  
14 testimony. Ms. Robinson testified that she reviewed Mr. Wagner's analysis of the jury's verdict  
15 and, when asked if she disagreed with it, she testified that it was mathematically correct. Estrich  
16 Reply Decl., Ex. 13 (Robinson Depo. Tr. at 88:2-8). Given Mr. Wagner's declaration included a  
17 detailed analysis of the jury's verdict and Ms. Robinson did not express disagreement with his  
18 opinions in response to this open-ended question, Apple's claim that she did not agree with his  
19 analysis is not credible. (Dkt. 1990-20).

20 Finally, Apple's objection to Exhibit 13 to the Estrich Declaration is based on a false  
21 factual premise. This exhibit is cited in Samsung's Reply in Support of Motion for Judgment as a  
22 Matter of Law, New Trial, and/or Remittitur. (Dkt. 2131, at 12).

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DATED: November 29, 2012

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