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 Counterclaim-Defendant APPLE INC.

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

16 APPLE INC., a California corporation,
 17 Plaintiff,

18 v.

19 SAMSUNG ELECTRONICS CO., LTD., A
 Korean business entity; SAMSUNG
 20 ELECTRONICS AMERICA, INC., a New York
 corporation; SAMSUNG
 21 TELECOMMUNICATIONS AMERICA, LLC, a
 Delaware limited liability company.,
 22 Defendants.

Case No. 11-cv-01846-LHK

**APPLE'S REBUTTAL
 SUPPLEMENTAL CLAIM
 CONSTRUCTION BRIEF**

Hearing: July 18, 2012
 Time: 2:00 p.m.
 Place: Courtroom 4, 5th Floor
 Judge: Honorable Lucy H. Koh

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1 **I. INTRODUCTION**

2 Disassociating itself from its own counsel’s recent representation to the Court that the
 3 term “electronic document” is “fairly straightforward” and that Samsung could live with a claim
 4 construction order explaining that “web pages and digital images are examples of electronic
 5 documents,” Samsung instead proposes an ambiguous “definition” that would encompass
 6 arbitrary groupings of multiple documents as well as arbitrary subsets of content that its own
 7 expert has testified would not constitute an “electronic document.” Samsung’s latest
 8 permutations of its mercurial claim constructions depart markedly from the intrinsic record.
 9 Given that Samsung has offered no explanation for why construction is even necessary for these
 10 terms in light of the Court’s previous *Markman* order, the Court should reject Samsung’s
 11 constructions and conclude that the terms “electronic document” and “structured electronic
 12 document” have their plain and ordinary meanings. In the case of “electronic document,” that is
 13 exactly what the Administrative Law Judge ordered last week in the *Apple v. HTC* ITC
 14 investigation. In the alternative, the Court should instruct the jury as Apple suggested in its
 15 opening brief, providing examples of “electronic document” and “structured electronic
 16 document” drawn directly from the patent specifications.

17 **II. ARGUMENT**

18 **A. Disputed Term from Claim 19 of the ’381 Patent: “electronic document”**

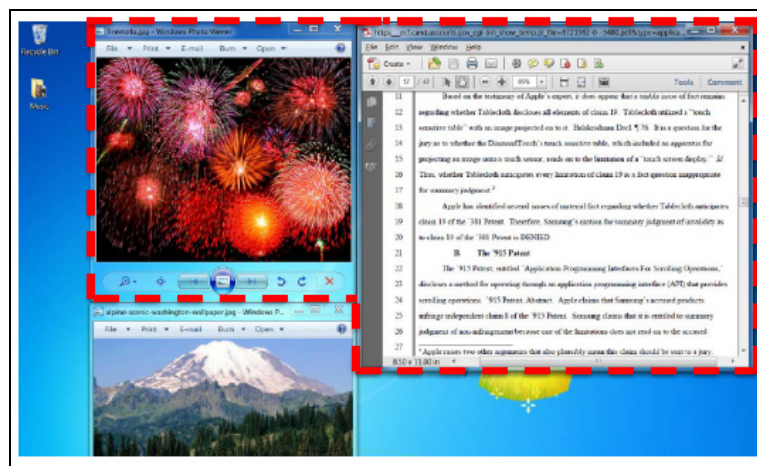
Apple’s Proposed Construction	Samsung’s Proposed Construction(s)
<p>20 No construction necessary.</p> <p>21 Alternatively, Apple proposes: “a document stored 22 in a digital format,” with the clarification that “an 23 ‘electronic document’ could be, for example, a web 24 page, a digital image, a word processing, spreadsheet or presentation document, or a list of items in a digital format.”</p>	<p>“content having a defined set of boundaries that can be visually represented on a screen”</p>

25 Only three weeks ago, counsel for Samsung represented to the Court that “the actual term
 26 ‘electronic document’ . . . is fairly straightforward and refers to web pages and digital images,”
 27 and that Samsung “could live with the portion of the claim construction order which basically
 28 says . . . ‘under the express language of the claims, web pages and digital images are examples of

1 electronic documents.” (Declaration of Deok Keun Matthew Ahn in Support of Apple’s
 2 Rebuttal Supplemental Claim Construction Brief (“Ahn Rebuttal Decl.”), filed herewith, Ex. 1 at
 3 73-74, 78.) In an about face, Samsung now submits to the Court a construction that contains none
 4 of the examples from the specification, and instead attempts to revive the ambiguous language of
 5 “content” and “boundaries” the Court previously found unhelpful, and which Samsung’s expert,
 6 Andries Van Dam, admitted fails to satisfy his understanding of what constituted an “electronic
 7 document.”

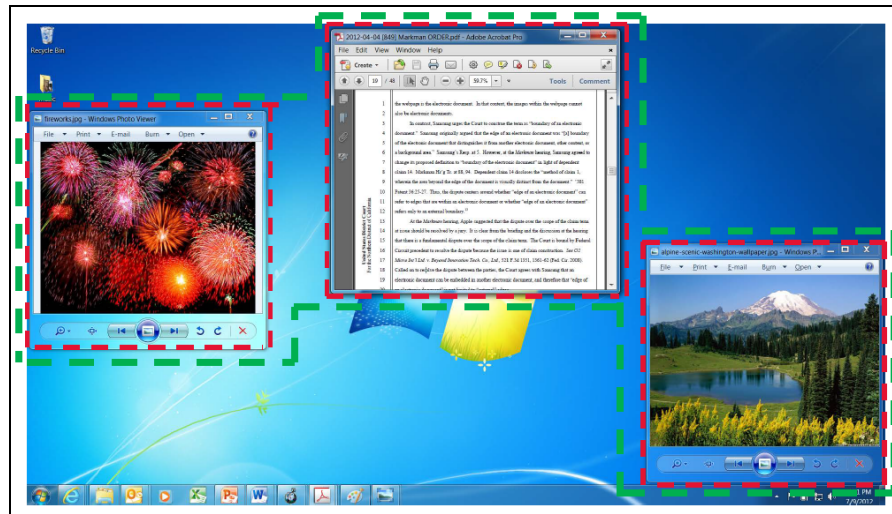
8 1. Samsung’s construction is overbroad

9 The problems with Samsung’s construction become apparent when applied to real life
 10 examples. Below, the dotted red line highlights “boundaries” around “content.” This illogical
 11 grouping of a separate digital image and a word processing document is an “electronic document
 12 under Samsung’s construction because it constitutes “content having a defined set of
 13 boundaries...” Samsung’s expert Dr. Van Dam would appear to endorse this example, as in
 14 discussing the prior art, he claimed that “[a]ny set of contiguous tiles could be considered an
 15 electronic document” even though such a claim cannot be squared with the examples of an
 16 “electronic document” from the specification. (Ahn Rebuttal Decl. Ex. 2 at 4.)



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26 Similarly, there is nothing in Samsung’s construction that would exclude a grouping of multiple
 27 documents, each with its own set of “boundaries,” into a single “electronic document.” Below,
 28 the set of boxes inside the dotted green line is also an “electronic document” according to

1 Samsung, since it is “content having a defined set of boundaries that can be visually represented
2 on a screen.”



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10 Each of these examples runs counter to the explicit disclosure of types of “electronic documents”
11 in the ’381 patent and makes little sense as a representation of an “electronic document.”

12 13 2. The Court has already resolved the ’381 construction dispute

14 When the Court held that the term “edge of the electronic document” in Apple’s ’381
15 patent had its plain and ordinary meaning, Samsung implicitly acknowledged that the words
16 “electronic document” did not require construction. (*See* Dkt. No. 849 at 18, 23 (Samsung
17 proposed “[a] boundary of the electronic document” as the construction for “an edge of the
18 electronic document”) (emphases added).) The Court also resolved the parties’ dispute regarding
19 whether the word “edge” meant only an “external edge.” (*Id.*) In doing so, the Court declined to
20 substitute the term “boundary” for the term “edge” because this proposed replacement “d[id] not
21 clarify the term in a way that justifies deviation from the plain language of the claims.” (Dkt. 849
22 at 20.)

23 Samsung’s latest construction attempts to relitigate the construction of “edge of the
24 electronic document” by reintroducing the previously rejected “boundary” language. Because the
25 word “boundary” is susceptible to an interpretation that could embrace any line or demarcation in
26 a document, Samsung is attempting to take advantage of that ambiguity to create invalidity
27 arguments through its alleged prior art. Then, as now, permitting an “electronic document” to be
28 any content demarcated by “boundaries” instead of a complete document with “edges” would

1 depart from the clear claim language and resurrect a dispute that has long since been resolved.¹
2 The Court should not permit Samsung to rehash this argument.

3 **3. Samsung's construction has no intrinsic support**

4 Samsung also fails to identify any intrinsic evidence to support its construction. The
5 "Intrinsic Evidence" portion of Samsung's brief is limited to citing portions of the specification
6 that identify exemplary types of electronic documents such as a "web page," a "digital image," or
7 a "word processing document." (*See* Dkt. No. 1183-3 at 2-3.) How these sections of the
8 specification support Samsung's construction—when that construction fails to quote them or to
9 provide any of the examples that Samsung acknowledged would assist the jury in understanding
10 the claim language—is a mystery. Rather, the examples from the specification Samsung cites
11 directly support Apple's proposed construction. In sum, there is no intrinsic evidence that
12 supports Samsung's substitution of the ambiguous concept "content with boundaries" for the term
13 "electronic document."

14 **4. Samsung's extrinsic evidence is contradictory, unconvincing, and**
15 **contrary to the specification**

16 In its *Markman* order, the Court discounted the construction of "edge of the electronic
17 document" offered by Samsung's expert Dr. Van Dam because "expert opinions are less reliable
18 than intrinsic evidence, and the Court gives the testimony little weight." (Dkt. No. 849 at 23
19 (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005)).) The Court also noted in
20 its order denying Samsung's summary judgment motion that the submitted "extrinsic sources
21 [we]re not persuasive in construing the disputed term" and "less significant than the intrinsic
22 record," and that the Court would "rel[y] on the intrinsic evidence in construing the disputed
23 claim term." (Dkt. No. 1158 at 20.)

24 Despite the Court's directive to the parties to set forth reliable intrinsic support for their
25 constructions, Samsung again falls back on extrinsic evidence and trots out the same incomplete

26
27 ¹ By including the examples of a "web page" and a "digital image," Apple's alternative
28 construction is consistent with the Court's finding that an "electronic document" such as a digital
image can be embedded in another electronic document such as a webpage.

1 excerpts from Dr. Balakrishnan’s deposition testimony that the Court already considered in
 2 construing “edge of the electronic document.” First, Samsung neglects to cite a key portion of
 3 Dr. Balakrishnan’s testimony, which in no way supports its construction:

4 Q. What’s your definition of electronic document as it’s used in the
 5 ’381 patent today?

6 . . .

7 A. I believe the term is understood in this case to be the plain and
 8 ordinary meaning of electronic document.

9 (Ahn Rebuttal Decl. Ex. 3 at 186:18-25.)

10 Second, Dr. Balakrishnan made clear that what constituted an “electronic document” in a
 11 given example was context specific, and that it was the computer code that should make the
 12 determination of what was the “electronic document,” and not an end user simply labeling an
 13 arbitrary grouping of lines. He did not agree that any haphazard grouping of lines in a grid could
 14 constitute an “electronic document.”²

15 The reason for Samsung’s insistence that any lines or “boundaries” can delineate an
 16 “electronic document” is clear. Its prior art, including the “LaunchTile” and “Lira” references,
 17 has lines that Samsung would like to classify as demarcating an “electronic document.” Yet even
 18 Dr. Van Dam recognized that there should be limits on what could qualify as an electronic
 19 document. When asked if a paragraph within a Microsoft Word document could be an electronic
 20 document, he answered: “If you are talking about I have a typesetting program and it produces
 21 paragraphs, then those paragraphs don’t really have a separate identity, and I would find it not
 22 very useful to consider them an electronic document, but there is no hard-and-fast rule.” (Ahn
 23 Rebuttal Decl. Ex. 5 at 58:25-59:16) (emphasis added.)

24 Though Dr. Van Dam did not believe that a paragraph in a word processing document
 25 should be considered an “electronic document,” Samsung disagrees. Depicted below is a

26 ² Although Samsung contends that Dr. Balakrishnan’s testimony and the grid on page 4 of
 27 its brief support its construction, all he acknowledged was that it was theoretically possible to
 28 create and display an electronic document smaller than the screen, or with an irregular shape,
 depending on the specific context. (See Ahn Rebuttal Decl. Ex. 4 at 151:25-158:20.)

1 paragraph within a Microsoft Word document that is bounded by tables above and below, and by
 2 formatting lines to the left and to the right. Because this paragraph is “content having a defined
 3 set of boundaries that can be visually represented on a screen,” it would be classified as an
 4 “electronic document” under Samsung’s construction. This conflicts with Dr. Van Dam’s
 5 testimony, as well as common sense.

7	processing, spreadsheet or presentation document, or	
8	a list of items in a digital format.”	
9	<p>10 In its Order Denying Samsung’s Motion for Summary Judgment, the Court recognized</p> <p>11 that the dispute between the parties revolves around whether a set of conceptually independent</p> <p>12 application tiles arranged onto a grid for display contains sufficient structure to meet the</p> <p>13 limitation of a “structured electronic document,” and not how the claim language should be</p> <p>14 construed. (Dkt. No. 1158 at 27-28.) Accordingly, despite Samsung’s best attempts to frame the</p> <p>15 dispute as one of claim construction, the Court is under no obligation to construe this</p> <p>16 unambiguous term. See <i>O2 Micro</i>, 521 F.3d at 1362.</p>	
17		
18	Apple’s Proposed Construction	Samsung’s Proposed Construction(s)
19	No construction necessary. If the Court believes construction is necessary, Apple	“content having a defined set of boundaries that can be visually

13 The inconsistencies between Samsung’s construction and its own expert’s understanding of the
 14 term and the incompatibility between this extrinsic evidence and the plain language of the claim
 15 demonstrate that Samsung’s proposed construction is erroneous.

16 5. The ALJ in *Apple v. HTC* Confirmed Apple’s Position

17 Finally, Samsung resorts to its habitual tactic of selectively citing material from other
 18 lawsuits in which its counsel is counsel of record. Samsung not only fails to provide any factual
 19 context for its reliance on a single image from an infringement contention against a third party
 20 product not at issue in this case. More importantly, Samsung fails to disclose that the ALJ
 21 recently issued a claim construction order in the very same ITC investigation from which
 22 Samsung’s exhibit is taken. There, both the ITC staff and the ALJ rejected essentially the same
 23 arguments that Samsung repeats here and found that “electronic document” should be accorded
 24 its plain and ordinary meaning. (Ahn Rebuttal Decl. Ex. 6.) In so doing, the ALJ noted the
 25 irreconcilable ambiguity in how the “boundaries” discussed by HTC (and in Samsung’s
 26 construction) were to be determined, and that the terms “electronic” and “document” were not
 27 used in any unusual or special way and were readily understood by laypersons and persons of
 28 ordinary skill. (*Id.*)

1 **6. The Court should find that “electronic document” has its plain**
 2 **and ordinary meaning, or in the alternative, adopt Apple’s**
 3 **construction**

4 As noted in Apple’s opening brief, the plain and ordinary meaning of “electronic
 5 document” should control because there is no suggestion that this term was used in an unusual or
 6 atypical manner. *See Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1369 (Fed. Cir. 2012)
 7 (“Absent disclaimer or lexicography, the plain meaning of the claim controls”). Even Samsung
 8 admits that the specification supports Apple’s alternative construction: “The specification
 9 provides several examples of electronic documents including: web pages, digital images, and
 10 word processing, spreadsheet, email and presentation documents.” (Dkt. No. 1183-3 at 3; *see*
 11 *also* ’381 patent col. 27:7-12; col. 30:21-26; col. 31:40-45; claims 6 – 9.) In contrast to
 12 Samsung’s unfounded definition, Apple’s construction draws directly from the specification.
 13 And to remove all doubt, Apple’s extrinsic evidence from its opening brief makes clear that
 14 Apple’s construction is correct. (*See, e.g.*, Dkt. No. 1186-6 (document: “in word processing, text
 15 that can be named and stored as a separate entity”) (emphasis added).)

16 Because Samsung’s attempt to change the plain meaning of the term “electronic
 17 document” to encompass arbitrary groupings demarcated by lines or other “boundaries” as well as
 18 multiple files with separate identities having no connection with one another has no foundation in
 19 either the intrinsic or extrinsic evidence, the Court should either conclude that this term has its
 20 plain and ordinary meaning or adopt Apple’s construction.

21 **B. Disputed Term from Claim 50 of the ’163 Patent: “structured electronic**
 22 **document”**

<u>Apple’s Proposed Construction</u>	<u>Samsung’s Proposed Construction</u>
23 No construction necessary. 24 Alternatively, Apple proposes: “an ‘electronic document,’ 25 as previously defined, that is formatted to differentiate 26 particular blocks or boxes of content in the document 27 from one another,” with the clarification that “a ‘structured electronic document’ could be, for example, a web page, an HTML or XML document, or a document in which the blocks or boxes of content are defined by a style sheet language.”	“an electronic document that includes at least one visual structural element”

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1 Though Samsung claims that its new construction of “structured electronic document” is
2 substantively the same as its previous construction of “any type of two-dimensional information
3 space containing embedded coding that provides some meaning or ‘structure’ to the document,”
4 even a cursory examination of these two definitions reveals that both cannot reflect the
5 understanding of those skilled in the art. Given Mr. Gray’s assertion that Samsung’s previous
6 construction was the correct one (*see* Dkt. No. 931 ¶ 60), and given the conspicuous absence of a
7 declaration from Mr. Gray in support of Samsung’s current construction, it should be clear that
8 “an electronic document that includes at least one visual structural element” does not reflect how
9 this unambiguous claim language would have been understood by those in the art.

10 **1. Samsung’s construction is groundless**

11 As the Court noted in its order denying Samsung’s summary judgment motion, the dispute
12 between the parties revolves around whether a set of conceptually independent application tiles
13 arranged onto a grid for display meets the limitation of a “structured electronic document,” and
14 not how the claim language should be construed. (Dkt. No. 1158 at 27-28.) Samsung’s new
15 construction creates from whole cloth the ambiguous term “visual structural element.”
16 Samsung’s new construction is not tethered to anything in the claim language or the specification,
17 and it creates confusion, not clarity, as compared with the plain and ordinary meaning of
18 “structured electronic document.” Samsung’s alternative construction, which also incorporates its
19 definition of “electronic document” from the ’381 patent, is further flawed for the reasons
20 described above in the discussion of that term.

21 **2. Samsung’s construction has no intrinsic support**

22 Samsung fails to provide any intrinsic evidence to support its construction of “structured
23 electronic document.” The “Intrinsic Evidence” portion of Samsung’s brief is limited to citing
24 portions of the specification that explain that a “structured electronic document” may include
25 “blocks” or “boxes of content,” and that identify exemplary types of “structured electronic
26 documents” such as a “web page” or a “HTML or XML document.” (*See* Dkt. No. 1183-3 at 6-
27 7.) These sections of the specification do not support Samsung’s construction. The specification
28 does not use the term “visual structural element,” and none of the language from the specification

1 concerning these defining features or the helpful examples such as a “web page” appears in
2 Samsung’s construction. Tellingly, Samsung devotes a significant portion of its argument to
3 trying to *exclude* from any construction the specific examples of a “structured electronic
4 document” identified in the specification. (Dkt. No. 1183-3 at 7.)³ In sum, there is no intrinsic
5 evidence that supports Samsung’s reimagining of the unambiguous term “structured electronic
6 document,” and in light of Samsung’s desire to omit any reference to the three specific examples
7 listed in the specification, it should be clear that Samsung’s construction runs counter to the
8 intrinsic evidence.

9 **3. Samsung’s extrinsic evidence is unconvincing and contrary to the**
10 **specification**

11 As discussed above, the Court previously found that the extrinsic evidence submitted by
12 the parties in their claim construction disputes, including expert opinions, was not persuasive, and
13 that the Court would instead “rel[y] on the intrinsic evidence in construing the disputed claim
14 term.” (Dkt. No. 1158 at 20.) Nevertheless, Samsung again relies almost exclusively on extrinsic
15 evidence and cites to excerpts from various inventors’ deposition testimony as well as to
16 statements from both Dr. Singh (Apple’s expert) and Mr. Gray (Samsung’s expert). After
17 selectively citing to Dr. Singh’s opinions, however, Samsung objects to his discussion of his
18 understanding of “structured electronic document” in a more recent declaration. This is
19 particularly self-serving in light of Samsung’s entirely new construction for this term.

20 Apart from the lack of credibility in Samsung’s position based on its abandonment of the
21 construction that Mr. Gray swore was the understanding of those in the art, none of the cited
22 testimony actually supports Samsung’s construction. None of the quoted expert witnesses or
23 inventors endorsed the ambiguous language “visual structural element.” If anything, each of the
24 witnesses cited by Samsung appears to confirm that “structured electronic document” has its plain
25 and ordinary meaning. (*See, e.g.*, Dkt. No. 1183-3 at 8 (citing witnesses who provided examples
26 of a “structured electronic document”).)

27 ³ Apple’s alternative construction does not suggest that the list of examples of “structured
28 electronic documents” is exhaustive – they are expressly illustrative “examples” of the genus.

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4. The Court should find that “structured electronic document” has its plain and ordinary meaning, or in the alternative, adopt Apple’s construction

As noted in Apple’s opening brief, the plain and ordinary meaning of “structured electronic document” should control because there is no suggestion that this term was used in an unusual or atypical manner. *See Toshiba Corp.*, 681 F.3d at 1369. Even Samsung admits that the specification supports Apple’s alternative construction. (*See, e.g.*, Dkt. No. 1183-3 at 6-7 (“The specification describes a ‘structured document’ as being ‘made of blocks 3914 of text content and other graphics”) (emphases added); *see also* ’163 patent col. 2:59-60; 18:44-45; 16:27-28.) The specification also provides unambiguous examples of what is meant by “structured electronic document”: “web pages” and “an HTML or XML document.” (*See* ’163 patent at col. 1:47-48; 2:12-13; 18:48-52; claims 4-5; Figures 6A and 8.)

In contrast to Samsung’s unfounded definition, Apple’s alternative construction draws directly from the specification. It recites language from, and the examples delineated in, the specification (including the examples of a web page and HTML or XML document, as well as the “boxes of content” language) which is “the single best guide to the meaning of a disputed term.” *Phillips*, 415 F.3d at 1315. Samsung’s attempt to add complexity and ambiguity to the term “structured electronic document” has no foundation in the intrinsic or extrinsic evidence. Therefore, the Court should either conclude that this term has its plain and ordinary meaning or adopt Apple’s construction.

III. CONCLUSION

For the foregoing reasons, Apple requests that the Court adopt its proposed constructions and reject Samsung’s unsupported definitions.

Dated: July 10, 2012

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