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15 LTD., SAMSUNG ELECTRONICS AMERICA,  
INC. and SAMSUNG  
16 TELECOMMUNICATIONS AMERICA, LLC

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19  
20 APPLE INC., a California corporation,

21 Plaintiff,

22 vs.

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

27 Defendants.

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S ADMINISTRATIVE  
MOTION FOR RELIEF FROM APRIL 29,  
2013 CASE MANAGEMENT ORDER**

Place: Courtroom 4, 5th Floor

Judge: Hon. Lucy H. Koh

1 Pursuant to Civil L.R. 7-11 and 79-5, and General Order No. 62, Defendants Samsung  
 2 Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications  
 3 America, LLC (collectively, “Samsung”) hereby bring this administrative motion for relief from  
 4 the upcoming deadlines in the Court’s April 29, 2013 Case Management Order (“CMC Order”)  
 5 based on Apple’s numerous violations of this Court’s orders regarding the content of Apple’s new  
 6 expert report and the scope of a new trial on damages.

7 **ARGUMENT**

8 **I. APPLE’S NEW EXPERT REPORT INCLUDES NUMEROUS VIOLATIONS OF**  
 9 **THE COURT’S ORDERS.**

10 On June 24, 2013, Apple served a 393-page Expert Report of Julie Davis (“Davis Report”).  
 11 The Report improperly includes different methodologies from Mr. Musika’s prior reports and  
 12 opinions excluded by the Court’s prior rulings. The Court’s CMC Order was unambiguous:

13 The Court’s prior rulings on the parties’ *Daubert* motions, motions in limine, discovery  
 14 disputes, and evidentiary objections will remain in effect as law of the case. The parties  
 may not relitigate these issues.

15 ... [T]he new trial on damages will be extremely limited. The sole purpose of the trial is to  
 16 correct the erroneous notice dates. ... Apple’s new damages expert may *not* include  
 different methodologies in his or her expert report, and may *not* draw upon new data.

17 (Dkt. No. 2316 at 2-3 (emphasis added).) Indeed, at Apple’s own urging, the Court expressly  
 18 prohibited damages theories not presented to the first jury. (Declaration of Anthony P. Alden In  
 19 Support of Samsung’s Mot. For Admin. Relief (“Alden”), Ex. 1, Apr. 29, 2013 Tr. at 67:17-21  
 20 (“Whatever theories either side presented to the last jury can be presented to this jury. You can –  
 21 you can present less if you want to, but you cannot present more.”).)

22 Apple has blatantly ignored the Court’s rulings. Apple’s violations are so numerous and  
 23 consequential that Samsung cannot fairly respond and prepare for trial in the time and under the  
 24 procedural limits set by the current CMC Order. In particular, Apple’s multiple violations require  
 25 immediate relief from the CMC Order’s deadlines for a rebuttal report and limitations on  
 26 Samsung’s motion strike improper opinions, both of which rested on Apple’s representation to the  
 27 Court that its report would not seek to introduce new theories. (*Id.* at 65:12-16 (The Court: “I’m  
 28 not going to allow any other variations other than the notice date. I -- Is that clear? Mr. Jacobs:

1 That sounds like a ruling. We'll take it as a ruling.”.) Some illustrative examples of Apple’s  
2 violations are presented below:<sup>1</sup>

3 [REDACTED]  
4 At trial, Mr. Musika presented two damages models to the jury: the first model sought lost  
5 profits, Samsung’s gross profits and a royalty; the second model sought Samsung’s gross profits  
6 and a royalty, but not lost profits. (PX25A1 (under seal) at 4-5.) [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 use the methodologies Apple presented at trial, adjusted to correct the erroneous notice dates as  
11 ordered by the Court. [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 [REDACTED] At trial, Apple did  
16 not argue to the jury that Samsung’s profits should be measured by total revenues, as opposed to  
17 gross profits. [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 [REDACTED] Furthermore, while Mr. Musika prepared an exhibit that purported to be a  
24 single calculation of incremental profits for all Samsung products (including unaccused products),  
25 he did not do so on a product-by-product basis. (PX28; *see also* Aug. 13, 2012 Tr. at 2058:3-6

26 \_\_\_\_\_

27 <sup>1</sup> This motion is based solely on Apple’s violation of Court orders. Samsung reserves the  
28 right to move to strike on substantive grounds as provided in the Court’s CMC Order.

1 (Mr. Musika admits PX28 includes “other sales of non-accused items”).) [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 3. [REDACTED] The Court  
5 unequivocally ruled no changes to the damages period. (Alden Ex. 1 at 41:21-42:1 (“[N]o new  
6 damages period, no new methods. ... This can be just a very simple change of Mr. Musika’s  
7 exhibits to start from the correct date. I’m not going to allow anything else to be done. I’m not  
8 going to allow new damages.”).) [REDACTED] Mr. Musika’s method for  
9 calculating Apple’s lost profits assumed that Samsung would design around Apple’s asserted IP in  
10 a specific amount of time, and that Apple would be entitled to lost profits only during those design  
11 around periods. (See Aug. 13, 2012 Tr. at 2084:3-19.) Mr. Musika assumed [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]<sup>2</sup> This change was made

19 solely so that Apple can claim vastly greater damages. [REDACTED]

20 [REDACTED]

21 4. [REDACTED]

22 [REDACTED]

23 \_\_\_\_\_

24 <sup>2</sup> [REDACTED]  
25 [REDACTED] the Court barred Apple from doing so. (Dkt. 1690 at 2 (“Mr. Musika did not  
26 timely disclose his calculations pursuant to an alternative two notice period theory.”).) The [REDACTED]

27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED] the Court ruled that  
3 Apple “may not introduce any data regarding Infuse 4G sales that occurred prior to May 15,  
4 2011.” (Dkt. No. 2316 at 2.) [REDACTED]

5 [REDACTED] <sup>3</sup>

6 **B. Apple's Other Violations of the Court's Orders.**

7 1. [REDACTED]

8 [REDACTED] The Court properly  
9 excluded the section from Mr. Musika’s report [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] The Court previously excluded Mr. Musika from offering [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 3. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] Mr. Musika did not refer to or rely on [REDACTED]

21 [REDACTED], it was not presented to the jury, and Samsung had no opportunity to depose  
22 or cross-examine [REDACTED]

23 [REDACTED]. Apple’s damages testimony was completed on August  
24 13, 2012. Apple chose not to recall Mr. Musika for further testimony at the conclusion of  
25 Samsung’s case – despite representing to the Court that it would do so. (See Aug. 17, 2012 Tr. at

26 \_\_\_\_\_

27 <sup>3</sup> [REDACTED]  
28 [REDACTED] However, despite the passage of over two months, Apple has not done so.

1 3407:6-14.) Apple cannot use [REDACTED]  
2 [REDACTED]  
3 [REDACTED] Finally, Mr. Musika testified  
4 about just four trial exhibits. (Aug. 13 Tr. at 2031-2172 (Mr. Musika’s testimony limited to  
5 PX25A1, PX28, PX34 and PX194).) [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED], contrary to the Court’s order “that the new  
11 trial on damages will be extremely limited.” (Dkt. No. 2316 at 3.)

12 **II. SAMSUNG IS PREJUDICED BY APPLE’S VIOLATIONS.**

13 Apple’s [REDACTED]  
14 [REDACTED], do not give Samsung fair notice of what Apple intends to present at trial. Apple’s  
15 violations also improperly require Samsung to address in its rebuttal report numerous issues  
16 excluded by the Court. Samsung is also prejudiced by Apple’s [REDACTED]  
17 [REDACTED]. Samsung will be prejudiced if it  
18 must now prepare rebuttal to Apple’s improper 393-page report, given the current deadlines for a  
19 rebuttal report and expert discovery. Furthermore, Apple’s new expert report is a transparent  
20 attempt to overwhelm Samsung’s opportunity to move to strike. The Court’s limitation to a  
21 single, seven-page motion to strike was premised on its instruction to avoid new data, methods,  
22 and theories. The scope of Apple’s new theories makes a seven-page limitation unworkable.  
23 Likewise, Apple’s numerous violations of the Court’s order not to re-litigate previous evidentiary  
24 exclusions threatens Samsung’s opportunity to address its further objections to the Davis Report.

25 **CONCLUSION**

26 Because Apple has flagrantly violated the Court’s CMC Order, the Court should vacate all  
27 deadlines and set a new case management conference on further proceedings, including a deadline  
28 for Apple to comply with the limitations on a new expert report previously set by the Court.

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DATED: July 1, 2013

Respectfully submitted,

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