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CO., LTD., SAMSUNG ELECTRONICS
14 AMERICA, INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC
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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
18

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 Defendant.
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CASE NO. 11-cv-01846-LHK

**SAMSUNG'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF SAMSUNG'S
MOTION FOR NEW TRIAL
REGARDING '381 PATENT PURSUANT
TO FED. R. CIV. P. 59 BASED ON
NEWLY DISCOVERED EVIDENCE**

1 Pursuant to Fed. R. Evid. 201, Defendants Samsung Electronics Co., Ltd., Samsung
2 Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively
3 “Samsung”) respectfully request that the Court take judicial notice of the file history for the
4 reexamination of U.S. Patent No. 7,469,381, Appl. No. 90/012,304. A copy of the file history
5 (excluding prior art references not cited by the examiner) is attached to this request as Exhibits A-
6 1 through A-4.

7 **BASIS FOR REQUESTING JUDICIAL NOTICE**

8 Under Federal Rule of Evidence 201(b)(2), “The court may judicially notice a fact that is
9 not subject to reasonable dispute because it: . . . (2) can be accurately and readily determined from
10 sources whose accuracy cannot reasonably be questioned.” Courts have recognized that it is
11 proper to take judicial notice of public records from reexamination proceedings. *Standard Havens*
12 *Products, Inc. v. Gencor Industries, Inc.*, 897 F.2d 511, 514 n.3 (Fed. Cir. 1990)(taking judicial
13 notice of first office action on reexamination); *Old Reliable Wholesale, Inc. v. Cornell Corp.*, 635
14 F.3d 539, 549 (Fed. Cir. 2011)(taking judicial notice of notice of intent to issue reexamination
15 certificate because court can take judicial notice of decision from another agency); *Function*
16 *Media, LLC v. Google Inc.*, 708 F.3d 1310, 1316 n.4 (Fed. Cir. 2013)(taking judicial notice of
17 reexamination because it is proper to take judicial notice of a decision from an agency).

18 Public records “may be judicially noticed.” *Massachusetts v. Westcott*, 431 U.S. 322, 323
19 n. 2, 97 S.Ct. 1755, 1756 n. 2, 52 L.Ed.2d 349 (1977). Because “[a]ll papers . . . relating to a
20 reexamination proceeding which have been entered of record in the record in the patent or
21 reexamination file are open to inspection by the general public,” the reexamination file constitutes
22 a public record subject to judicial notice. 37 C.F.R. § 1.11(d).

1 DATED: July 8, 2013

Respectfully submitted,

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