

1 HAROLD J. MCELHINNY (CA SBN 66781)
hmcclhinny@mofo.com
2 MICHAEL A. JACOBS (CA SBN 111664)
mjacobs@mofo.com
3 RACHEL KREVANS (CA SBN 116421)
rkrevans@mofo.com
4 ERIK J. OLSON (CA SBN 175815)
ejolson@mofo.com
5 MORRISON & FOERSTER LLP
425 Market Street
6 San Francisco, California 94105-2482
Telephone: (415) 268-7000
7 Facsimile: (415) 268-7522

8
9 Attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.

WILLIAM F. LEE
william.lee@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
mark.selwyn@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
950 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 858-6000
Facsimile: (650) 858-6100

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 corporation; SAMSUNG
20 ELECTRONICS AMERICA, INC., a New
York corporation; and SAMSUNG
21 TELECOMMUNICATIONS AMERICA,
LLC, a Delaware limited liability company,

22 Defendants.
23

Case No. 11-cv-01846-LHK (PSG)

**APPLE’S MOTION FOR LEAVE
TO FILE A SURREPLY TO
SAMSUNG’S MOTION FOR NEW
TRIAL REGARDING ’381 PATENT
PURSUANT TO RULE 59 BASED
ON “NEWLY DISCOVERED
EVIDENCE” OR,
ALTERNATIVELY, FOR ENTRY
OF JUDGMENT ON LIABILITY**

1 Trying to persuade this Court to enter an improper “judgment on liability,” Samsung’s
2 Reply omits part of the title of a document entered by the district court in *Robert Bosch, LLC v.*
3 *Pylon Mfg. Corp.* Samsung claims that the *Bosch* district court entered a separate “Final
4 Judgment Following Post Trial Motion Practice.” (Dkt. No. 2352-3 at 14.) But the full title of
5 that document was “Final Judgment Following Post Trial Motion Practice Pursuant To Fed. R.
6 Civ. P. 54(b).”¹ That Rule 54(b) judgment related only to the *Bosch* defendant’s counterclaim of
7 unenforceability. No general “judgment on liability” was issued in *Bosch* after the post-judgment
8 motions were resolved. Samsung is wrong in suggesting otherwise and in asking this Court to
9 issue such a judgment. Apple thus moves for leave to file the accompanying surreply to correct
10 the record in this regard and to respond to Samsung’s misquotation.

11 Moreover, for the first time, Samsung’s Reply cites multiple decisions to try to establish
12 the timeliness of the alternative requests in Samsung’s Motion. Given the glaring timeliness
13 issues with both of Samsung’s requests, the Motion should have addressed timeliness so that
14 Apple could respond. Instead, Samsung’s Motion was silent on its timeliness. Apple should be
15 granted leave to rebut the Reply’s newly cited decisions.

16 On the merits, Samsung’s Reply does not dispute that Dr. Van Dam’s opening Declaration
17 analyzed irrelevant stock Android code and failed to discuss the Samsung code accused of
18 infringement. Instead, Samsung’s Reply now serves up a different, but erroneous, non-
19 infringement argument, relying on an improper and completely new Reply declaration. Apple
20 should be permitted leave to respond and explain why this new argument is wrong.

21 Samsung’s Reply also mischaracterizes Dr. Balakrishnan’s expert report and trial
22 testimony relating to “edge detection” versus “centering.” Samsung asserts that neither Apple nor
23 the Court ever suggested such a distinction before the 2013 reexamination. Samsung’s assertions
24 are false. Samsung fails to mention this Court’s Order denying Samsung’s prior JMOL /new trial
25 motion, in which the Court expressly relied on the Balakrishnan testimony and confirmed that

26 ¹ Final Judgment Following Post Trial Motion Practice Pursuant to Fed. R. Civ. P. 54(b),
27 *Robert Bosch, LLC v. Pylon Mfg. Corp.*, No. 08-CV-542 (D. Del. Mar. 23, 2011) (Dkt. No. 396)
(emphasis added).

1 claim 19 requires “edge detection.” (Order, Dkt. No. 2220 at 23-24.) Samsung’s Reply also
2 ignores its own 2012 testimony and court filings acknowledging that instructions for “edge
3 detection” are a requirement of claim 19. Apple should be permitted leave to file the
4 accompanying surreply so that it can correct the errors and omissions in Samsung’s filing.

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Dated: August 8, 2013

MORRISON & FOERSTER LLP

By: /s/ Harold J. McElhinny
HAROLD J. MCELHINNY

Attorneys for Plaintiff
APPLE INC.