

1 HAROLD J. MCELHINNY (CA SBN 66781)
hmcclhinny@mofo.com
2 MICHAEL A. JACOBS (CA SBN 111664)
mjacobs@mofo.com
3 RICHARD S.J. HUNG (CA SBN 197425)
rhung@mofo.com
4 MORRISON & FOERSTER LLP
425 Market Street
5 San Francisco, California 94105-2482
Telephone: (415) 268-7000
6 Facsimile: (415) 268-7522

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

7
8
9 Attorneys for Plaintiff and
10 Counterclaim-Defendant APPLE INC.

11
12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION
16

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

19 v.

20 SAMSUNG ELECTRONICS CO., LTD., A
Korean business entity; SAMSUNG
21 ELECTRONICS AMERICA, INC., a New York
corporation; SAMSUNG
22 TELECOMMUNICATIONS AMERICA, LLC, a
Delaware limited liability company.,
23 Defendants.
24

Case No. 11-cv-01846-LHK

**APPLE'S REPLY CLAIM
CONSTRUCTION BRIEF
PURSUANT TO PATENT L.R. 4-5**

Claim Construction
Hearing: Jan 20, 2012
Time: 10:00 a.m.
Place: Courtroom 4, 5th Floor
Judge: Honorable Lucy H. Koh

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. THE '002 PATENT – “THE FIRST WINDOW REGION...ETC.”	1
II. THE '381 PATENT – “AN EDGE OF THE ELECTRONIC DOCUMENT”	3
III. THE '607 PATENT – “GLASS MEMBER”	5
IV. THE '828 PATENT.....	6
A. “fitting an ellipse”	6
B. “pixel / pixel groups”	10
V. THE '915 PATENT – “SCROLLING A WINDOW ASSOCIATED WITH AN EVENT OBJECT”	10
VI. THE '891 PATENT.....	12
A. “Starting a timer”.....	12
B. “the first window has been displayed independently...etc.”.....	13
VII. CONCLUSION	15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

CASES

Abbott Labs. v. Sandoz, Inc.,
566 F.3d 1282 (Fed. Cir. 2009) 8

Alloc, Inc. v. ITC,
342 F.3d 1361 (Fed. Cir. 2003) 9

Gentry Gallery, Inc. v. Berkline Corp.,
134 F.3d 1473 (Fed. Cir. 1998) 9, 10

Helmsderfer v. Bobrick Washroop Equip., Inc.,
527 F.3d 1379 (Fed. Cir. 2008) 8

Honeywell Int’l, Inc. v. ITT Indus., Inc.,
452 F.3d 1312 (Fed. Cir. 2006) 8

ImageCUBE LLC v. Boeing Co.,
No. 2010-1265, 2011 U.S. App. LEXIS 12413 (Fed. Cir. June 20, 2011) 8

In re Convertible Rowing Exerciser Patent Litig.,
721 F. Supp. 596 (D. Del. 1989) 11

Int’l Visual Corp. v. Crown Metal Co.,
991 F.2d 768 (Fed. Cir. 1993) 4

JVW Enters., Inc. v. Interact Accessories, Inc.,
424 F.3d 1324 (Fed. Cir. 2005) 8

Linear Tech. Corp. v. Int’l Trade Comm’n,
566 F.3d 1049 (Fed. Cir. 2009) 2

Pfizer v. Teva Pharm.,
429 F.3d 1364 (Fed. Cir. 2005) 11, 12

TransWeb, LLC v. 3M Innovative Props. Co.,
10-cv-4413, 2011 U.S. Dist. LEXIS 132153 (D.N.J. Nov. 16, 2011) 7

OTHER AUTHORITIES

Northern District of California Patent Local Rule 4-3(b) passim

1 Far from adhering to well-established canons of claim construction, Samsung's arguments
2 lack factual and legal support. The Court should adopt Apple's proposed constructions.

3 **I. THE '002 PATENT – “THE FIRST WINDOW REGION...ETC.”**

4 As Samsung concedes in its opposition (“Opp.”), its proposed construction would limit
5 the '002 patent claims to one embodiment. In particular, Samsung would restrict the claims to an
6 embodiment in which a “first window region” displaying status or control information “always”
7 appears in front of application windows. But the specification also discloses that the control strip
8 may, at the user's option, be hidden. (Apple's Opening Claim Construction Brief Pursuant To
9 Patent L.R. 4-5 (“Apple Opening Br.”) at 4-5.) Under general principles of claim construction,
10 the independent claims – which do not expressly require Samsung's “always” – should cover this
11 embodiment as well. *See Linear Tech. Corp. v. Int'l Trade Comm'n*, 566 F.3d 1049, 1059-60
12 (Fed. Cir. 2009) (error to limit claims to “directly” monitoring current where patent “not only
13 discloses monitoring current *directly* . . . but also *indirectly* by some other means”) (emphasis in
14 original). Samsung has no persuasive answer to this argument.

15 Samsung also offers no justification for reading the term “window layer” out of the claim
16 or for adding the limitation that “independent display areas are never obscured by any portion of
17 any application windows that are generated or capable of being generated.” Samsung's principal
18 argument relies on a misconstruction of a single snippet from the prosecution history relating to
19 the Hansen reference.¹ According to Samsung, “Apple emphasized that the first window region
20 in the '002 patent *always* appears on top of application programming windows.” (Opp. at 3,
21 emphasis original.) Samsung mischaracterizes Apple's statement. What Apple actually said in
22 its response was that the claimed invention “allows the user to have an unobstructed view of the
23 system/controller area” and that “[t]hus, the window *may be* always visible to the user.” (Briggs
24 Declaration in Support of Samsung's Opposition (“Briggs Decl.”) Ex. C, at APLNDC00028084)

25
26 ¹ Apple objects to and moves to strike (1) the portions of Samsung's opposition (p. 4 and
27 n.3) referring to “O.A., 11/7/2001” and “Response to O.A., 8/20/1996” cited in Samsung's
28 opposition as “Ex. C,” but not actually included as part of Exhibit C; and (2) Exhibit D (Hansen
reference), because they were not identified in the Joint Claim Construction Statement (“JCCS”)
in accordance with Patent Local Rule 4-3(b).

1 (emphasis added). Apple’s argument that the window “may be” always visible (rather than “must
2 be” always visible) provides no support for Samsung’s proposed construction since the user
3 optionally “may” hide the control strip.

4 Regardless, the Examiner did not allow the claims based on this response. Apple
5 appealed to the Board of Patent Appeals, and its Appeal Brief further refutes Samsung’s argument.
6 In its August 31, 2000 Appeal Brief, Apple did not argue that the first window must “always”
7 appear on top of application windows. Rather, Apple explained that, “[i]n *one embodiment*, the
8 control strip is implemented in a private window layer that appears in front of the windows of all
9 the application layers . . . This prevents other windows from obscuring it.” (Reply Declaration of
10 Deok Keun Matthew Ahn (“Ahn Reply Decl.”) Ex. R at APLNC0028966) (emphasis added).
11 Apple thus underscored that the control strip’s appearance in front of all application windows was
12 an optional, non-mandatory feature.

13 Apple also presented other arguments to distinguish the Hansen combination. (*See id.* at
14 APLNDC00028972; 28976; 28983.) Apple’s appeal – and not its argument to the Examiner – led
15 to claim allowance. And at no point did Apple unequivocally disclaim embodiments in which the
16 “first window region” does not “always” appear in front of application windows.

17 Samsung also has no plausible response to Apple’s claim differentiation argument.
18 (Apple Opening Br. at 5.) Dependent claim 12, for example, explicitly requires that the first
19 window region “*always* appears in front of application windows.” (Emphasis added.) Samsung’s
20 contention that the limitations of dependent claims 12 and 13 were incorporated into the
21 independent claims via amendment is simply inaccurate. (Opp. at 5.) Although Apple did amend
22 the independent claims to require “[a] first window region and the plurality of independent
23 display areas implemented in a window layer that appears on top of application programming
24 windows that may be generated,” these amendments did not incorporate the limitations of
25 dependent claims 12 and 13. Those claims required that the first window region “*always* appears
26 in front of application windows” (claim 12, formerly claim 23) or be implemented in a private
27 window layer “that appears in front of windows for *all* applications layers” (claim 13, formerly
28 claim 24) (emphases added). Via its amendments, Apple preserved the distinction between the

1 independent claims, in which the “first window” appears in a window layer on top, and the
2 dependent claims, in which the first window “always” appears on top of “all” application
3 programs.

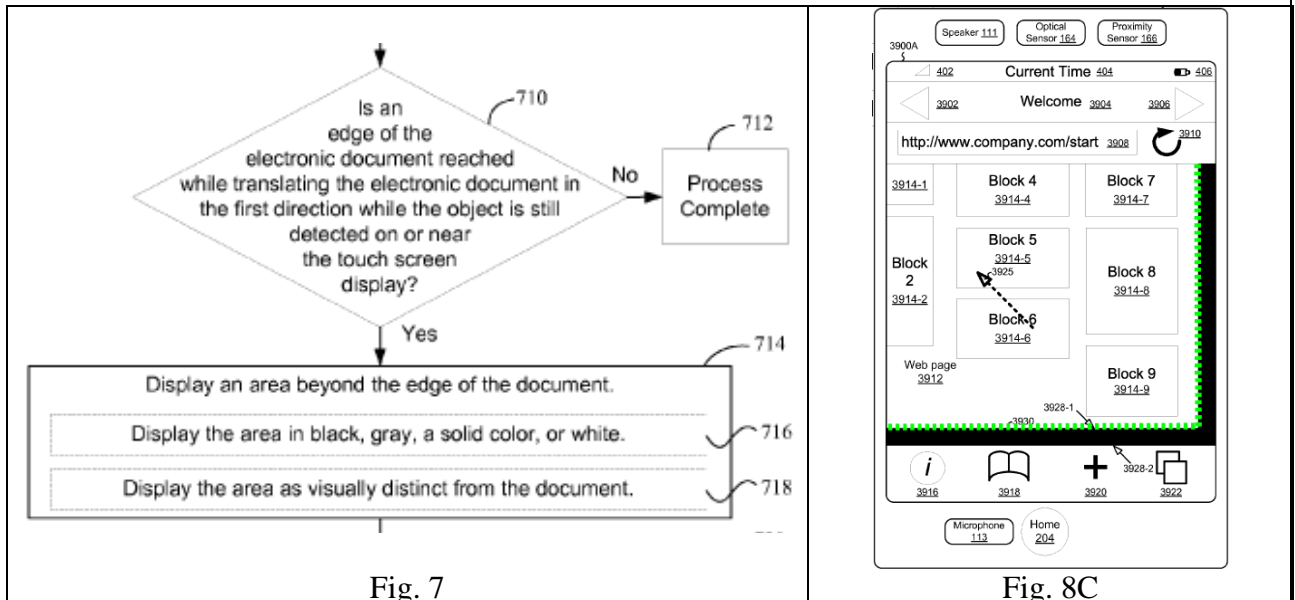
4 Finally, in a footnote, Samsung alleges that the inventor agreed with its claim
5 construction. This is both factually incorrect and legally irrelevant. In the cited deposition
6 excerpt, the inventor was addressing not claim construction, but a commercial embodiment of the
7 invention. In particular, the inventor explained that the “Control Strip” that he developed for
8 Apple’s PowerBook computers “floated” in front of the application windows. In this way, if an
9 application created a window, it would appear behind the Control Strip. (Briggs Decl. Ex. B at
10 126:11-127:22.) Whether an early commercial implementation of the ’002 patent implemented
11 every claimed embodiment is irrelevant to the claim construction inquiry. *See Int’l Visual Corp.*
12 *v. Crown Metal Co.*, 991 F.2d 768, 771-72 (Fed. Cir. 1993) (error to construe claims in
13 comparison with patentee’s commercial embodiment).

14 **II. THE ’381 PATENT – “AN EDGE OF THE ELECTRONIC DOCUMENT”**

15 Samsung is mistaken that “[t]he parties’ dispute concerns whether any content can exist
16 beyond ‘an edge of the electronic document.’” (Opp. at 6.) The parties’ disagreement actually
17 centers on whether “an edge of the electronic document” can arbitrarily be defined, as Samsung
18 proposes, to mean internal boundaries between different types of content within an electronic
19 document. This is in contrast with Apple’s approach, which focuses on the actual “edge of the
20 electronic document” as those words would be understood by a person of ordinary skill. The
21 specification leaves no doubt that Apple’s approach is the correct one.

22 As Apple explained in its opening brief, the specification describes exemplary
23 circumstances under which an area beyond the edge of the electronic document is displayed. In
24 one embodiment, the system determines whether the following condition is satisfied: “Is an edge
25 of the electronic document reached”? (’381 patent at 27:25-29; Fig. 7.) If this condition is
26 satisfied, the system then “[d]isplay[s] an area beyond the edge of the document.” (*Id.*) The
27 execution of this if-then statement is depicted in Figure 8C, where the display of the black area
28 beyond the edge of the electronic document is contingent on the system’s detection of an external

1 edge (in green) of the electronic document, and not by detection of the internal borders separating
2 different types of content within the electronic document.



12 Conversely, if the condition of reaching the external “edge” is not satisfied in this
13 embodiment, then the system does not display an area beyond the edge of the electronic
14 document. (*Id.*) This is consistent with the purpose of the invention, which is to provide visual
15 feedback when a user attempts to scroll beyond the confines of an electronic document. As a
16 matter of common sense, and as Samsung’s own expert Andries Van Dam recognized, there is no
17 need for the system to provide this visual feedback when a user is not at an actual edge of the
18 electronic document, but is merely scrolling within the electronic document. (Apple Opening Br.
19 at 8 (quoting Dr. Van Dam’s testimony that edge indicates boundary separating electronic
20 document from area that is “further than [the electronic document] should go”).)

21 Although Samsung contends that “images within [a] webpage,” such as Block 5 or Block
22 7 in Figure 8C, have “internal edges,” it is clear that these internal demarcations separating
23 different boxes of content within an electronic document are not themselves the “edge[s] of the
24 electronic document” within which they are contained. In Figure 8C, display of the areas beyond
25 the internal lines surrounding Block 5 or Block 7 does not depend on detecting a document
26 “edge.” The system does not respond to crossing those internal demarcation lines by displaying a
27 black area beyond the internal boundary, and then translating the image on the screen in the
28

1 opposite direction. Not only are the areas beyond what Samsung calls “internal boundaries”
2 displayed without satisfaction of any conditions, they are meant to be constantly present on screen
3 so long as the content is displayed. This is in contrast to the dark area beyond the actual “edge”
4 of the electronic document, which appears briefly when the edge is crossed and then disappears
5 when the user’s finger is removed from the screen.

6 Because areas beyond the “internal boundaries” under Samsung’s construction are already
7 displayed regardless of the satisfaction of any edge-related conditions, it is clear that an internal
8 line that simply distinguishes “other content” is not “an edge of the electronic document” as
9 contemplated by the ’381 patent. Samsung’s construction fails to account for the electronic
10 document edge-specific functionality disclosed in the patent, and must be rejected.

11 Abandoning its extrinsic evidence in the Joint Claim Construction Statement, and unable
12 to reconcile its expert’s agreement with Apple, Samsung instead heavily relies on an exhibit used
13 during Dr. Balakrishnan’s deposition. Yet any suggestion that this exhibit demonstrates
14 Dr. Balakrishnan’s agreement with Samsung’s construction would be false. This is because
15 Samsung’s counsel expressly *instructed* Dr. Balakrishnan to label lines on a grid as an “edge”
16 and as “beyond the edge,” and Dr. Balakrishnan merely did as he was told. (*See* Ahn Reply Decl.
17 Ex. S at 157:9-15, 158:12-14 (“Q. So let’s just label that ‘edge’ for me . . .”; “Q. So can you just
18 label that ‘beyond the edge’?”).)

19 The Court therefore should reject Samsung’s unsupported construction and give this clear,
20 non-technical claim term its plain and ordinary meaning.

21 **III. THE ’607 PATENT – “GLASS MEMBER”**

22 Samsung concedes, as it must, that the ’607 specification states that “any suitable glass or
23 plastic material may be used for the glass members.” (’607 patent at 16:46-47.) Nonetheless,
24 Samsung apparently suggests that a “glass member” cannot be plastic because the specification
25 uses the words “glass” and “plastic” separately.² (Opp. at 8.) Samsung fails to note, however,
26

27 ² Apple objects to and moves to strike Exhibits I (Huppi Dep. Tr.) and J (Strickon Dep.
28 Tr.) because they were not identified in the JCCS in accordance with Patent Local Rule 4-3(b).

1 that the specification uses the term “glass member” consistently throughout the specification, and
2 never recites “plastic member” at all. Far from “mak[ing] a distinction between glass and plastic”
3 (Opp. at 8), the specification’s consistent use of “glass member” shows that the specification’s
4 definition should control.

5 Samsung contends that the specification does not adequately define the term “glass
6 member” – supposedly because it does not “set out with ‘reasonable clarity, deliberateness, and
7 precision” the term’s meaning. (Opp. at 10.) It is difficult to conceive of a more precise
8 definition of “glass member” than “any suitable glass or plastic material,” and other courts have
9 concluded that analogous specification language constitutes a definition. *See, e.g., TransWeb,*
10 *LLC v. 3M Innovative Proprs. Co.*, 10-cv-4413, 2011 U.S. Dist. LEXIS 132153, at *10-17 (D.N.J.
11 Nov. 16, 2011) (where specification provides that charging can be accomplished using variety of
12 techniques including “hydrocharging, i.e., contacting an article with water in a manner sufficient
13 to impart a charge to the article, followed by drying the article,” “[t]he specification sufficiently
14 demonstrates a clear intent that the patentee wished to act as his own lexicographer in defining
15 ‘hydrocharging,’ and it is that definition that controls”).

16 **IV. THE ’828 PATENT**

17 **A. “fitting an ellipse”**

18 Samsung concedes that, as of the ’828 patent’s filing, “there were many different ways to
19 do ellipse fitting.” (Opp. at 11.) Thus, there is no dispute that Samsung’s proposed construction
20 – “applying a unitary transformation of the group covariance matrix of second moments” – differs
21 markedly from the plain and ordinary meaning of mathematically fitting an ellipse. Samsung
22 fails to offer a persuasive justification for its limiting construction.

23 Samsung contends that the ’828 inventors acted as their own lexicographer. (Opp. at 12-
24 13.) Samsung points to a sentence in the specification stating that in one of the preferred
25 embodiments, “the ellipse fitting procedure requires a unitary transformation of the group
26 covariance matrix,” and relies on that language in its proposed construction. But such a statement
27 does not constitute a definition of the term “mathematically fitting an ellipse,” which appears only
28

1 in the claims. Indeed, as Apple noted in its opening brief (and Samsung ignores), the statement
2 on which Samsung relies contrasts with this patent’s many explicit definitions that “clearly
3 express” the inventors’ intent to define terms. (See Apple Opening Br. at 15:24-16:15;
4 *Helmsderfer v. Bobrick Washroop Equip., Inc.*, 527 F.3d 1379, 1381 (Fed. Cir. 2008).)³
5 Moreover, the statement is surrounded by none of the “this invention” or similar phrasing that
6 sometimes supports reading in a limitation from the claims. See, e.g., *Honeywell Int’l, Inc. v. ITT*
7 *Indus., Inc.*, 452 F.3d 1312, 1317-19 (Fed. Cir. 2006) (construing claim limitation as “fuel filters”
8 where specification referred to fuel filters as “this invention” and “the present invention”).
9 Rather, the cited portion is merely an element in the patent’s description of the particular
10 embodiment disclosed in that section of the specification. Limiting the claim language to this
11 embodiment would be a classic claim construction error. See *Abbott Labs. v. Sandoz, Inc.*, 566
12 F.3d 1282, 1288 (Fed. Cir. 2009) (“this court will not limit broader claim language to [a single
13 embodiment] unless the patentee has demonstrated a clear intention to limit the claim scope using
14 words or expressions of manifest exclusion or restrictions”) (internal quotation marks omitted);
15 *JVW Enters., Inc. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1335 (Fed. Cir. 2005) (limiting
16 claim to disclosed embodiments inappropriate “even when a specification describes very specific
17 embodiments of the invention or even describes only a single embodiment, unless the
18 specification makes clear that the patentee . . . intends for the claims and the embodiments in the
19 specification to be strictly coextensive”) (internal quotation marks omitted).

20 In addition, as Apple demonstrated in its opening brief, “applying a unitary transformation
21 of the group covariance matrix of second moments” does not, in fact, fit an ellipse. It is a first
22 step that can be taken *before* fitting an ellipse – something that Samsung does not dispute. (Apple
23 Opening Br. at 15:1-13.) Samsung therefore asks the Court to hold that the inventors defined the
24

25 ³ Samsung relies on *ImageCUBE LLC v. Boeing Co.*, No. 2010-1265, 2011 U.S. App.
26 LEXIS 12413 (Fed. Cir. June 20, 2011), as support for its position that the ’828 inventors acted as
27 their own lexicographer. In *ImageCUBE*, however, the court construed the phrase “components
28 A and B” without ever holding that the inventor had acted as his own lexicographer. While citing
several portions of the specification to support its construction, the *ImageCUBE* court never
stated that the word “requires” signifies an intent to define a claim term.

1 phrase “mathematically fitting an ellipse” to mean something (“applying a unitary transformation
2 of the group covariance matrix of second moments”) that *does not fit an ellipse*.

3 Nor could Samsung show that the inventors disclaimed the ordinary meaning of
4 mathematically fitting an ellipse. As explained in Apple’s opening brief, disclaimer requires a
5 “clear intention to limit the claim scope,” which is not present here. (*Id.* at 14-15.) Samsung
6 does not contend otherwise, thus conceding by its silence that no disclaimer is present.

7 Samsung cites to the prosecution history where the claim term “fitting an ellipse” was
8 amended to “mathematically fitting an ellipse.” (Opp. at 13.) The prosecuting attorney made no
9 argument, however, that would support the much narrower construction that Samsung offers.
10 Indeed, as Apple explained in its opening brief, nothing in the prosecution history involved
11 distinguishing “mathematically fitting an ellipse” from any other type of fitting an ellipse. Nor is
12 there anything in the prosecution history regarding the “unitary transformation of the group
13 covariance matrix” definition. (Apple Opening Br. at 17-18.) For this reason, this case is entirely
14 unlike *Alloc, Inc. v. ITC*, 342 F.3d 1361 (Fed. Cir. 2003), on which Samsung relies. In *Alloc*, the
15 court construed the patent claims as requiring “play” in the joint because “the [patent] applicant
16 emphasized the criticality of play during prosecution” of the patent family. *Id.* at 1373. Samsung
17 has shown no such prosecution disclaimer here.

18 Finally, Samsung argues that this Court should find, under *Gentry Gallery, Inc. v.*
19 *Berkline Corp.*, 134 F.3d 1473 (Fed. Cir. 1998), that the claims must be limited to the particular
20 preferred embodiment for ellipse fitting shown in column 26. (Opp. at 14.) Samsung suggests
21 that, under *Gentry Gallery*, the disclosure of a single embodiment obligates the Court to limit the
22 claims to that embodiment. (Opp. at 14:5-6 (“The Federal Circuit has held that when a patent
23 discloses only one embodiment, it is proper to limit the claims to this single embodiment”).)
24 Samsung misreads *Gentry Gallery*. In the portion of the decision on which Samsung relies, the
25 Federal Circuit did not construe the claims narrowly. Instead, the court held that, in the unusual
26 circumstances present there, claims that were broader than the disclosure were invalid under
27 section 112. 134 F.3d at 1480 (reversing decision that claims “were not shown to be invalid”).

28 Under *Gentry Gallery*, the proper course is for this Court to construe the claims per their ordinary

1 meaning and entertain any invalidity challenges in due course. Apple is confident that the claims
2 of the '828 are fully supported by its specification under *Gentry Gallery* and progeny.

3 In any event, Samsung errs in suggesting that there is only one ellipse fitting embodiment
4 shown in the '828 patent. As explained in Apple's opening brief, the second preferred
5 embodiment performs ellipse fitting because it computes "total group proximity size G_z ," one of
6 the specifically identified parameters that can define an ellipse. (Apple Opening Br. at 16-17.)
7 Samsung contends that '828 patent inventor Wayne Westerman testified before the ITC that the
8 second embodiment "is not an embodiment of ellipse fitting at all" (Opp. at 14:21-22),⁴ but in the
9 cited testimony Dr. Westerman offered nothing even close to such an opinion. In a portion of his
10 ITC testimony that Samsung ignores, Dr. Westerman testified – just as Apple contends here – that
11 the second preferred embodiment was a "way of fitting the ellipse parameters:"

12 Q. Okay. And let's go back to column 27 [where the second
13 preferred embodiment is disclosed] and the method that's described
14 there. Is that an example of mathematically fitting an ellipse?

14 [objection of counsel]

15 JUDGE ESSEX: Why don't you tell me what that discloses, Doctor?

16 THE WITNESS: Yes, I believe it is an alternate way of fitting the
17 ellipse parameters.

18 (Ahn Reply Decl. Ex. T at 339-40; *see also id.* at 288-353 (all of Dr. Westerman's ITC hearing
19 testimony regarding ellipse fitting, provided for completeness).) Samsung also fails to address
20 ITC testimony from Dr. Balakrishnan confirming that the second embodiment constitutes ellipse
21 fitting. (Ahn Reply Decl. Ex. U at APLNDC0001229687-688 ("At column 27 lines 1 through 8,
22 the '828 Patent specification further describes another embodiment . . . this embodiment still
23 mathematically defines an ellipse").) As a result, limiting the claims as Samsung proposes would
24

25 ⁴ Apple objects to and moves to strike (1) the portions of Exhibit L referred to on page 13
26 of Samsung's opposition as "App. No. 11/677,958, 2/22/2007" and "O.A. 12/24/2009"; (2)
27 Exhibit M (Westerman Dep. Tr.); (3) Exhibit N (Westerman ITC testimony); and (4) Exhibit O
28 (ITC Staff brief), as these were not specifically identified in the JCCS. Samsung's purported
reservation of its right to cite to anything from that ITC investigation does not satisfy Patent
Local Rule 4-3(b).

1 read out a preferred embodiment, which “is rarely, if ever, correct.” *Pfizer v. Teva Pharm.*,
 2 429 F.3d 1364, 1374 (Fed. Cir. 2005).⁵

3 **B. “pixel / pixel groups”**

4 Samsung’s brief acknowledges that the ’828 patent describes how to generate a
 5 “proximity image [which] shows where the hand is touching or close to the touch-sensitive
 6 surface,” and that “[t]he proximity image consists of *pixels*.” (Opp. at 11 (emphasis added).) At
 7 no point does the specification use the term “pixel” to refer to anything other than a part of the
 8 proximity image. Samsung nonetheless suggests that the term should not be construed at all,
 9 apparently in an attempt to argue that the term encompasses (or even is limited to) a “picture
 10 element” in a TV or camera. Samsung offers no reason for the Court to deviate from the meaning
 11 of the term “pixel” in the ’828 patent to refer to the portion of a proximity image that indicates the
 12 proximity data measured at one electrode.

13 **V. THE ’915 PATENT – “SCROLLING A WINDOW ASSOCIATED WITH AN
 14 EVENT OBJECT”**

15 Samsung’s confusing proposed construction for “scrolling a window having a view . . .” is
 16 plainly wrong and violates several canons of claim construction. Samsung begins by noting that
 17 the ’915 specification describes a “window” as a “display region” that “may be the entire display
 18 region or area of a display” and a “view” as content such as “web, text, or image content” that can
 19 be seen on the display. (Opp. at 17.) Following this non-controversial opening, Samsung

20
 21 ⁵ Samsung emphasizes that in the ITC proceeding against Motorola, the ITC staff
 22 recommended that the ALJ reject Apple’s proposed construction of “mathematically fitting an
 23 ellipse” and chastises Apple for not noting this in its opening brief. (Opp. at 15). Given that ITC
 24 determinations have limited, if any, precedential value, *see, e.g., In re Convertible Rowing*
 25 *Exerciser Patent Litig.*, 721 F. Supp. 596, 604 (D. Del. 1989), Samsung’s reliance on the ITC
 26 staff’s brief is misplaced. The ITC staff erred for the same reasons Samsung errs, by
 27 incorporating a limitation from one of the patent’s preferred embodiments into the claim. Apple
 28 notes, moreover, that the ITC staff agreed with Apple’s constructions of “glass member” in the
 ’607 patent and of terms relating to “pixels” and “proximity images” in the ’828 patent (the term
 “pixel group” was not in dispute, as all parties in that action acknowledged that “pixels” in the
 ’828 patent related to proximity images). As noted above, Samsung’s selective submission of a
 portion of the ITC staff’s brief on only one term (Ex. O) should be stricken. If Ex. O is not
 stricken, the staff’s positions on “glass member” and on terms relating to “pixels” and “proximity
 images” should be part of the record. (*See* Ahn Decl. Ex. V at APLNDC-X0000006667-6669;
 6709-6710.)

1 conjures three paragraphs of non-sequiturs. In these paragraphs, Samsung contends – without
2 citing to any intrinsic or extrinsic evidence – that: (i) “scrolling a window having a view” in the
3 claims is limited to a “very specific type of scrolling” in which “a finger swipe to the right results
4 in the next-rightmost portion of the content to appear under the window”; and (ii) the claim
5 language allegedly “explicitly excludes” and “do[es] not cover the situation where a finger swipe
6 that is horizontal to the right results in the next-leftmost portion of the content to appear under the
7 window . . .” (Opp. at 18.)

8 Samsung’s proposed construction contradicts the preferred embodiments in the patent,
9 which describe *exactly* the type of scrolling that Samsung contends is excluded by the claim
10 language. In particular, the specification describes the appearance of additional content opposite
11 the direction of a finger swipe, such that the content appears to be scrolling within a fixed
12 window. For example, Figures 4 through 6D of the ’915 patent depict vertical scrolling in which
13 a swipe in the downward direction causes additional entries at the top of a list to appear.⁶ It is an
14 elementary principle of claim construction that a construction that excludes a preferred
15 embodiment is rarely, if ever, correct. *Pfizer*, 429 F.3d at 1374.

16 The specification further contradicts Samsung’s argument that scrolling “a window having
17 a view” must reveal additional content only in the direction of the scrolling gesture. The patent
18 describes “rubberbanding” and “bounce” scrolling in which scrolling directions and the display of
19 content reverses during a scrolling operation, as well as “locked scrolling” in which the direction
20 of the swipe does not precisely match the direction of a swipe gesture. (Apple Opening Br. at
21 21.) Although Samsung asserts in a footnote that it did not “intend to make any statement
22 concerning the minutiae of the directionality of a scroll” with respect to nearly horizontal finger
23 swipes (Opp. at n.11), Samsung does not explain how its proposed construction can be squared
24 with “locked scrolling,” “rubberbanding,” and “bounce” scrolling.

25
26
27 ⁶ Samsung’s example employs a horizontal swipe, rather than a vertical swipe. Samsung
28 asserts that a horizontal swipe to the right would cause content to the right to appear. Under
Samsung’s logic, a downward swipe thus should cause content at the bottom of a list to appear.

1 The '915 patent also explicitly states that, “while embodiment 400 illustrates movement
2 414 in a particular direction, in other embodiments movement of the displayed objects may be in
3 response to movement 414 in one or more other directions.” ('915 patent at 8:20-23.) Finally, as
4 Apple noted in its opening brief, the specification further describes “scrolling” as “the act of
5 sliding a directional (*e.g.*, horizontal or vertical) presentation of content, such as text, drawings, or
6 images, across a screen or display window.” ('915 patent at 1:39-41.) That description of
7 scrolling includes sliding content to the right with a swipe to the right to cause additional content
8 to appear in the left edge of the window. Samsung ignores all of the embodiments disclosed in
9 the patent that contradict its proposed construction, and fails to cite a single line in the
10 specification or in the prosecution history to support its position.

11 VI. THE '891 PATENT

12 A. “Starting a timer”

13 Samsung suggests that Imran Chaudhri, one of the inventors of the '891 patent, testified
14 that having a timer that counts down to zero was the only possible way of implementing a timer.⁷
15 (Opp. at 21.) Samsung’s truncated quotation excludes Mr. Chaudhri’s prefatory statement that he
16 was “taking you back to my earlier example . . .” (Apple Opening Br. at 24:4-9.) The full
17 context for Mr. Chaudhri’s testimony demonstrates he was offering merely one example of a
18 timer in action, and in any case his testimony is not definitive evidence of the proper construction
19 of this claim limitation. *See E-Pass Techs., Inc.*, 343 F.3d at 1370 n.5 (inventor testimony of
20 limited probative value).

21 Samsung also relies on the operation of the Apple iPhone’s Clock application to support
22 its construction. Samsung fails to explain, however, how the application’s ‘timer’ and
23 ‘stopwatch’ functions reveal the appropriate meaning of “starting a timer” in the '891 patent. If
24 anything, the existence of both count-down *and* count-up functionality in the same time-keeping
25 application suggests that both methodologies are consistent with “starting a timer.”

26
27 ⁷ Apple objects to and moves to strike (1) Exhibits T (description of iPhone Clock
28 application), U and V (infringement contentions); and (2) Chaudhri deposition citation 70:22-
71:2, as they were not identified in the JCCS in accordance with Patent Local Rule 4-3(b).

1 Finally, Samsung's reliance on exemplary claim charts in Apple's infringement
2 contentions is misplaced. As Apple explained in its opening brief, the '891 patent contemplates
3 embodiments where, for example, "a predetermined amount of time" is counted, or "a time period
4 [is] calculated on the fly." ('891 patent at 9:35-39.) Dependent claim 23 requires that a
5 "condition is met," and Apple's exemplary reference to a determination of "whether or not an
6 amount of time has passed" is just that – an example of how that condition is met. In view of the
7 many disclosed ways in which time can be counted in the context of the patent, this extrinsic
8 evidence hardly suggests that the expiration of a timer can occur only when a timer reaches zero,
9 as opposed to, for example, finally reaching a time period that is calculated on the fly.

10 Samsung's passing mention of intrinsic evidence fails to provide any support for the
11 portion of its construction requiring that the timekeeping process "begin[] at a predetermined
12 value." As Apple noted in its opening brief, the '891 patent contemplates, among other
13 embodiments, "a time period calculated on the fly." (*Id.*) Because "a time period calculated on
14 the fly" is not "predetermined," Samsung's construction directly contradicts the specification on
15 this point and should be rejected.

16 Samsung also maintains that the claim term "expired" somehow means "reaching zero."
17 Yet every single citation to the specification in this section of Samsung's brief merely repeats the
18 claim language that a timer has "expired," and does not provide any support for the contention
19 that the timer must count down. Samsung's reliance on common usage, such as "a parking
20 meter" that "expires when it reaches zero" is similarly misplaced. (Opp. at 20.) Anyone who has
21 purchased anything with an expiration date is well aware that "expired" does not necessarily
22 imply counting down to zero.

23 The Court should reject Samsung's argument and give this claim language the ordinary
24 meaning confirmed by the specification.

25 **B. "the first window has been displayed independently...etc."**

26 Samsung's lengthy construction of this term suffers from several defects. Among other
27 things, it (1) redefines the well-understood term "cursor" by improperly limiting it to "a mouse
28 pointer or a similar icon"; (2) erroneously requires that the cursor be "controlled by a mouse,

1 track ball, or touch pad” where no such requirement is present in the claims; and (3) improperly
2 requires that a cursor be “visible on the screen,” where the claim merely requires that the first
3 window be displayed at a location independent of a cursor if a cursor is present. Samsung also
4 proposes, without explanation, to substitute the “movement” of a cursor for its “position.”

5 At the outset, Samsung fails to show why the term “cursor” should be limited to a “mouse
6 pointer or similar icon.” Leaving aside the ambiguity of what qualifies as a “similar icon” (or
7 why a text caret is not “similar” to a mouse pointer), Samsung bases its entire argument on the
8 “Aoki” reference. Samsung goes so far as to argue that “Aoki makes it clear that a cursor” has a
9 particular meaning.⁸ (Opp. at 22.) Of course, the claims of the ’891 patent are to be construed
10 based on the ’891 specification, not the specification of a different patent application.

11 Not only does Aoki fail to provide a definition of the term “cursor,” Apple’s discussion of
12 Aoki during prosecution did not somehow re-define the term “cursor” in the ’891 patent. Apple
13 overcame Aoki by noting that Aoki’s pop-up windows appeared in different locations depending
14 on where the stylus made contact with the screen. This is plainly depicted in Figure 13 of the
15 Aoki reference. (See Briggs Decl. Ex. W.) Restated, Aoki disclosed a *location-dependent*
16 window, as opposed to the ’891 patent’s window that is displayed *independently*. This was the
17 reason why Apple’s amendment (to require that “. . . the first window has been *displayed*
18 *independently* from a position of a cursor on the screen”) overcame the Examiner’s objection.
19 (Briggs Decl. Ex. X at APLNDC00028844 (emphasis added).) Samsung’s contention that “this
20 amendment would not have overcome the Examiner’s rejection” if “the cursor was merely a
21 blinking caret” (Opp. at 23) misses the mark.

22 Samsung also fails to show that the cursor must be controlled by a mouse, trackball, or
23 touchpad. Indeed, Samsung neglects to mention that the Examiner of the ’891 patent application
24 stated that the term “cursor control device” included “a mouse, a joystick, a **keyboard**, a touch
25 pad, a trackball” (Briggs Decl. Ex. X at APLNDC00028805 (emphasis added)), and that Apple
26

27 ⁸ Apple objects to and moves to strike Ex. X (12/4/2009 Office Action), as it was not
28 identified in the JCCS in accordance with Patent Local Rule 4-3(b).

1 did not disagree. Accordingly, the intrinsic evidence makes clear that a person of ordinary skill in
2 the art at the time of the invention would have understood that a keyboard constitutes a cursor
3 control device, and Samsung's attempt to exclude it (as well as other devices such as a joystick)
4 from its proposed construction must be rejected.

5 In addition, the '891 specification identifies, as "user input devices," a long list of items
6 including "*e.g.*, a keyboard, mouse, track ball, touch pad, touch screen, joy stick, button, or
7 others." ('891 patent at 2:45-46; 7:9-10; Figs. 1 and 14.) In view of the specification and
8 prosecution history, it is clear that these "user input devices" also can be cursor control devices.
9 That the specification does not repeat this full list of devices when discussing "cursor control
10 devices" is irrelevant, as the listed devices are examples. (*See* '891 patent at 2:16-17 ("*e.g.*, a
11 mouse, a track ball, or a touch pad") (emphasis added).)

12 Finally, Samsung insists that the patented method requires the use of a "visible" cursor
13 despite the fact that none of the illustrative figures in the patent (Figs. 7-11, 16-21) depicts a
14 cursor. Samsung again relies on Apple's arguments concerning Aoki, but they do not compel
15 Samsung's narrow construction. As noted above, Aoki disclosed a system in which the location
16 of a stylus pointer on a screen dictated the position and content of pop-up windows displayed on
17 the screen. Apple explained this to the Examiner, and further remarked that Aoki failed to
18 disclose all of the limitations of claim 1 (including the step of "displaying the first window
19 independently of the position of a cursor on the screen") for this reason. (Briggs Decl. Ex. X at
20 APLNDC00028844.) Apple's remarks do not require a cursor that is always visible on the screen.
21 Instead, they mean what they say: that the window's display must be independent of the position
22 of a cursor on the screen, which claim 1 requires and Aoki lacks.

23 VII. CONCLUSION

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

26 Dated: December 29, 2011

MORRISON & FOERSTER LLP

27 By: /s/ Michael A. Jacobs

MICHAEL A. JACOBS

Attorneys for Plaintiff APPLE Inc.