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14 AMERICA, INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC
15

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.
26

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S REQUEST FOR JUDICIAL
NOTICE REGARDING APPLE'S CLAIM
CONSTRUCTION POSITIONS ON U.S
PATENT NO. 7,469,381**

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 following:

4 1. Complainant Apple’s Non-Confidential Complaint in *Certain*
5 *Portable Electronic Devices and Related Software*, ITC Inv. No. 337-TA-
6 797, United States International Trade Commission, dated July 8, 2011
7 (“ITC Complaint”), attached hereto as Exhibit 1.

8 2. Exhibit 20 filed in support of Complainant Apple’s Non-
9 Confidential Complaint in *Certain Portable Electronic Devices and Related*
10 *Software*, ITC Inv. No. 337-TA-797, United States International Trade
11 Commission (“ITC Claim Chart”), attached hereto as Exhibit 2.

12 In addition, a video recording of the Apple iPhone Stocks Application, as shown to the
13 Court during the claim construction hearing on January 20, 2012, is attached hereto as Exhibit 3.

14 Despite being responsive to several of Samsung’s discovery requests relating to U.S.
15 Patent No. 7,469,381 (“’381 patent”), Apple has not produced the ITC Complaint or ITC Claim
16 Chart to Samsung nor did Apple inform the Court of these highly relevant documents during the
17 preliminary injunction or claim construction proceedings in this action. Samsung’s counsel
18 became aware of these documents just days before the claim construction hearing and promptly
19 brought them to the attention of the Court at the hearing.

20 **BASIS FOR REQUESTING JUDICIAL NOTICE**

21 During the January 20, 2012 claim construction hearing, Apple argued that for the ’381
22 patent, content cannot appear beyond the edge of an “electronic document” and that an electronic
23 document cannot have an “internal” edge. Apple also argued that a digital image is not an
24 “electronic document” when it is embedded within a larger electronic document, such as a web
25 page. Apple’s arguments contradict the positions it took in the ITC Complaint and ITC Claim
26 Chart. *See Certain Portable Electronic Devices and Related Software*, ITC Inv. No. 337-TA-797.

1 In the ITC Complaint and ITC Claim Chart, Apple represented that the Stocks application
 2 on the iPhone practices claim 1 of the '381 patent and provided a claim chart purporting to show
 3 how the Stocks application meets each limitation of claim 1. See ITC Complaint ¶¶ 69 and ITC
 4 Claim Chart. As shown in the ITC claim chart, the Stocks application occupies the entire display
 5 and is an electronic document that has external edges. Embedded within the Stocks application
 6 are three additional electronic documents: a stocks list (upper portion of touch screen display), a
 7 graph (lower-middle portion of touch screen display) and a menu bar (lowermost portion of touch
 8 screen display). Apple alleged in its ITC Claim Chart that the embedded stocks list is an
 9 “electronic document” and that the bottom edge of the stocks list is an “edge of an electronic
 10 document.” The stocks list has an internal edge within the Stocks application document, and
 11 content exists beyond this internal edge. The stocks list bounces back when a finger is removed
 12 from the touch screen as shown below.



(Bounce-Back Scrolling in iPhone Stock Application When Finger Is Removed From Touch Screen.)

21 See ITC Claim Chart at 4-6.

22 Thus, Apple has represented in its ITC claim charts that an electronic document (*i.e.* the
 23 stocks list) may be embedded within another electronic document (*i.e.* the Stocks application), that
 24 an “internal” edge can be an edge of an electronic document, and that content (*i.e.* the graph below
 25
 26
 27
 28

1 the stocks list) may appear beyond the edge of an electronic document. These assertions
 2 contradict Apple's proposed claim construction in this case.¹

3 In ruling on claim construction, this Court may take judicial notice of Exhibits 1 and 2
 4 pursuant to Fed. R. Evid. 201 because each are public filings in an administrative proceeding that
 5 are capable of accurate and ready determination. See Fed. R. Evid. 201; *Kurtcu v. U.S. Parking*
 6 *Inc.*, 2008 WL 2445080 (N.D. Cal. 2008) (“[J]udicial notice may be taken of orders and decisions
 7 taken by other courts and administrative agencies.”) (citing *Papai v. Harbor Tug & Barge Co.*, 67
 8 F.3d 203, 207 (9th Cir. 1995) (overruled on other grounds)). Because Exhibits 1 and 2 are highly
 9 relevant to the claim construction issues relating to '381 patent and Apple failed to disclose both
 10 to Samsung and the Court, Samsung respectfully requests that the Court take judicial notice of
 11 these documents at this time.

12
 13 DATED: January 31, 2012

Respectfully submitted,

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16
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 INC. and SAMSUNG
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 24
 25 ¹ At the January 20, 2012 claim construction hearing, Apple appeared to argue that the
 26 Stocks application display is not an electronic document and therefore the edge between the stocks
 27 list and the graph below the stocks list is not an internal edge. Apple's argument is directly
 28 contradicted by the Stocks application display itself, which is plainly an electronic document, and
 by the testimony of Apple's own expert and inventor. Samsung's Resp. Claim Const. Br. at 7;
 Balakrishnan Dep. 157:19-158:20, Ex. 104; Ording Dep. 20:18-21:3.

