

1 [COUNSEL LISTED ON SIGNATURE PAGE]

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

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a
Korean corporation, SAMSUNG
ELECTRONICS AMERICA, INC., a New
York corporation, and SAMSUNG
TELECOMMUNICATIONS AMERICA,
LLC, a Delaware limited liability company,

Defendants.

Civil Action No. 12-CV-00630-LHK

**JOINT SUBMISSION IN
RESPONSE TO THE COURT'S
REQUEST REGARDING ADR**

1 Pursuant to the Court's May 5, 2014 request, Apple and Samsung submit this Joint Statement
2 Regarding Alternative Dispute Resolution ("ADR"). (*See* Trial Tr. 3425:1-17.)

3 **Apple's Statement**

4 Apple has always been committed to a resolution with Samsung, preferably without the need
5 for litigation, that recognizes and protects Apple's intellectual property. As the Court knows from
6 trial, Apple met with Samsung multiple times before being forced to file the present lawsuits. After
7 litigation began, the most senior officials of Apple have devoted days' worth of their time to various
8 ADR processes, as well as having countless discussions with Samsung outside formal mediation.
9 Accordingly, when the Court inquired on May 5 whether Samsung and Apple were willing to engage
10 in further ADR, and counsel for Samsung stated they "were always willing to participate if there is
11 an interest in doing so" (Trial Tr. 3424:14-15), Apple also communicated its willingness to engage
12 in further discussions. (*Id.* at 3424:18-25.)

13 However, immediately after that exchange Samsung's lead counsel made a number of
14 statements suggesting that Samsung has no interest in stopping its use of Apple's patents or
15 compensating Apple for past infringement. For example, Mr. Quinn was quoted as saying: "I'm
16 more confident than in any case I've ever been in that this [jury verdict in the 630 matter] is
17 unsupported [by the evidence]. It will go to zero. They're not going to see any of this money. This
18 won't stand." *Samsung Atty Quinn Calls iPhone IP War 'Apple's Vietnam'*, Law360.com,
19 <http://www.law360.com/articles/534842/samsung-atty-quinn-calls-iphone-ip-war-apple-s-vietnam>
20 (last visited May 19, 2014). Mr. Quinn reportedly dismissed the earlier verdicts against Samsung by
21 saying: "Apple hasn't collected a penny—or succeeded in taking any products off the market." *Id.*
22 "This is Apple's Vietnam, and people are sick of it." *Id.* And, in what hardly presages a fruitful
23 return to mediation, Mr. Quinn remarked: "It's kind of hard to talk settlement with a jihadist." *Key*
24 *Samsung Lawyer Sees Patent War Ending Soon – With Apple Getting Nothing*, Cnet.com,
25 [http://www.cnet.com/news/samsung-attorney-quinn-says-patent-war-will-be-over-soon-and-apples-](http://www.cnet.com/news/samsung-attorney-quinn-says-patent-war-will-be-over-soon-and-apples-not-getting-our-money/)
26 [not-getting-our-money/](http://www.cnet.com/news/samsung-attorney-quinn-says-patent-war-will-be-over-soon-and-apples-not-getting-our-money/) (last visited May 19, 2014).

27 Apple remains concerned that despite protestations to the contrary, Samsung has adopted a
28 business model that prohibits early or even timely resolution of any dispute involving intellectual

1 property infringement. *See, e.g.*, Kurt Eichenwald, *Apple's Victory Over Samsung Isn't As Big As It*
2 *Seems*, VanityFair, <http://www.vanityfair.com/online/daily/2014/05/apple-samsung-lawsuit-winner>
3 (last visited May 19, 2014). Accordingly, Apple sent the letter attached as Exhibit A, inquiring
4 whether Samsung was genuinely interested in pursuing ADR. Apple further requested assurances
5 that Samsung would not, as it had done in the past, argue in the context of a request by Apple for an
6 injunction or the establishment of a future royalty, that Apple's willingness to pursue ADR reflected
7 a willingness to license Samsung to Apple's patents. Samsung responded in the letter attached as
8 Exhibit B. Samsung's refusal even to agree that it will not argue that Apple's participation in the
9 ADR process can be used in future injunction or royalty proceedings makes clear that Samsung has
10 no interest in entering into a meaningful ADR procedure or ceasing use of Apple's intellectual
11 property. Absent such assurance, it would be impossible for Apple to participate in ADR. However,
12 upon the receipt of assurances that Samsung will not use in any of the worldwide litigations Apple's
13 participation in ADR to resist an injunction or reduce a royalty, and that Samsung is genuinely
14 interested in reaching a resolution of these issues, Apple will engage in further ADR proceedings to
15 resolve the present lawsuits and avoid future litigation

16 Samsung's Statement

17 On May 5, the Court requested that the parties jointly report on the status of ADR by May
18 19. Having heard nothing from Apple, Samsung's counsel reached out to Apple on May 7 to inquire
19 about further ADR. Apple responded with its May 13th letter, posturing about Apple's purported
20 trial victories and demanding that Samsung agree to various conditions precedent to further ADR.

21 Despite its rhetoric, Apple has not been the only party engaged in efforts to settle this case.
22 Rather, for each of the prior ADR meetings cited by Apple, Samsung's most senior executives also
23 attended – traveling from Korea to San Francisco or Los Angeles to do so – and Samsung dedicated
24 at least as much, if not more, time and effort to those prior ADR meetings than that noted by Apple
25 in its May 13th letter. *See, e.g.*, Joint Submission dated February 21, 2014 (Dkt. No. 1310).

26 Apple seeks to condition further ADR on Samsung's agreement that "Samsung will not use
27 Apple's participation in ADR to resist an injunction or reduce a royalty." Importantly, if Apple
28 were truly interested in global resolution of all cases between the parties, this condition precedent to

1 ADR would be a non-issue. Regardless, Apple's condition is improper. The case law and Federal
2 Rules of Evidence define the boundaries of what Samsung may and may not argue – not Apple.
3 Apple's willingness to license its patents is relevant to multiple *Georgia Pacific* factors and, to the
4 extent relevant, Samsung should be permitted to make such arguments without Apple attempting to
5 extort an improper concession from Samsung, as it now is. By contrast, Samsung does not condition
6 its willingness to participate in ADR on anything even though Apple has repeatedly used its pre-
7 litigation meetings with Samsung during trial to support its arguments (*See, e.g.*, PX-132; 630 Trial
8 Tr. at 340:1-9; 2472:11-2473:1; 1846 Trial Tr. at 1290:7-16; 1951:1-1964:10; 1846 Retrial Tr. at
9 613:1-9; PX3038).

10 Finally, Apple cites to a series of statements attributable to Samsung's lead trial counsel as
11 "suggesting that Samsung has no interest in stopping its use of Apple's patents or compensating
12 Apple for past infringement." Yet the statements quoted by Apple relate to the fact that Samsung
13 does not believe portions of the juries' verdicts will withstand appeal. Such statements have little, if
14 anything, to do with Samsung's willingness to discuss settlement. Simply put, though both parties
15 contend that they are committed to resolution, only Apple seeks to impose an obstacle to this
16 resolution through a unilateral condition precedent to further ADR. Samsung remains amenable to
17 discussing settlement of these cases without seeking to impose any comparable conditions upon
18 Apple.

1 Dated: May 19, 2014

2 By: /s/ Mark D. Selwyn

By: /s/ Michael L. Fazio

3 Attorney for Plaintiff and Counterclaim-
4 Defendant

Attorney for Defendants and Counterclaim-
5 Plaintiffs

APPLE INC.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., AND SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC

7 HAROLD J. McELHINNY (CA SBN 66781)
hmcelhinny@mofo.com

CHARLES K. VERHOEVEN
(Bar No. 170151)

8 JACK W. LONDEN (CA SBN 85776)
jlonden@mofo.com

charlesverhoeven@quinnemanuel.com
KEVIN A. SMITH (Bar No. 250814)

9 RACHEL KREVANS (CA SBN 116421)
rkrevans@mofo.com

kevinsmith@quinnemanuel.com
QUINN EMANUEL URQUHART &

10 RUTH N. BORENSTEIN (CA SBN 133797)
rborenstein@mofo.com

SULLIVAN LLP
50 California Street, 22nd Floor

11 ERIK J. OLSON (CA SBN 175815)
ejolson@mofo.com

San Francisco, California 94111
Telephone: (415) 875-6600

12 MORRISON & FOERSTER LLP
425 Market Street

Facsimile: (415) 875-6700

13 San Francisco, California 94105-2482
Telephone: (415) 268-7000

KEVIN P.B. JOHNSON (Bar No. 177129
(CA); 2542082 (NY))

14 Facsimile: (415) 268-7522

kevinjohnson@quinnemanuel.com

15 JOSH A. KREVITT (CA SBN 208552)
jkrevitt@gibsondunn.com

VICTORIA F. MAROULIS (Bar No. 202603)

16 H. MARK LYON (CA SBN 162061)
mlyon@gibsondunn.com

victoriamaroulis@quinnemanuel.com
QUINN EMANUEL URQUHART &

17 GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road

SULLIVAN LLP
555 Twin Dolphin Drive, 5th Floor

18 Palo Alto, CA 94304-1211

Redwood Shores, California 94065
Telephone: (650) 801-5000

19 Telephone: (650) 849-5300

Facsimile: (650) 801-5100

20 Facsimile: (650) 849-5333

WILLIAM C. PRICE (Bar No. 108542)

21 WILLIAM F. LEE (*pro hac vice*)
William.lee@wilmerhale.com

williamprice@quinnemanuel.com

22 WILMER CUTLER PICKERING
HALE AND DORR LLP

QUINN EMANUEL URQUHART &
SULLIVAN LLP

23 60 State Street

865 South Figueroa Street, 10th Floor
Los Angeles, California 90017-2543

24 Boston, Massachusetts 02109

Telephone: (213) 443-3000

25 Telephone: (617) 526-6000

Facsimile: (213) 443-3100

26 Facsimile: (617) 526-5000

27

28

1 MARK D. SELWYN (CA SBN 244180)
mark.selwyn@wilmerhale.com
2 WILMER CUTLER PICKERING
HALE AND DORR LLP
3 950 Page Mill Road
4 Palo Alto, CA 94304
Telephone: (650) 858-6000
5 Facsimile: (650) 858-6100

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

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

ATTESTATION

I, Michael L. Fazio, am the ECF User whose ID and password are being used to file this Joint Submission. In compliance with Local Rule 5-1(i)(3), I hereby attest that Mark D. Selwyn has concurred in this filing.

Dated: May 19, 2014

/s/ Michael L. Fazio
Michael L. Fazio