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 13 LLC

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

18 APPLE INC.,

19 Plaintiff,

20 v.

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

24 Defendant.

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

**JOINT STATEMENT REGARDING
 PROPOSED VERDICT FORM**

1 The parties have been unable to agree on a verdict form, but have agreed on the following
2 points:

- 3 • The order of questions, except as noted below;
- 4 • The format for patent invalidity questions, except as to the wording for the
5 standard of proof;
- 6 • The form of the chart that the jury will be asked to complete in response to the
7 question of whether Samsung has proven infringement by Apple (although not the
8 wording for the question itself). (Charts below Apple Question No. 14 and
9 Samsung Question No. 25.)
- 10 • The two questions under the heading “Damages to Samsung from Apple”. (Apple
11 Question Nos. 17 and 18; Samsung Question Nos. 28 and 29).
- 12 • The three questions under the heading “Breach of Contract Claims and Antitrust”
13 (Apple Question Nos. 19-21; Samsung Question Nos. 30-32).

14 The parties’ disagree, as set forth more fully in the attached proposed verdict forms of
15 Apple (Exhibit A) and Samsung (Exhibit B), respectively, on these points:

- 16 • How to assess liability separately for the three Samsung defendants (*compare, e.g.,*
17 Apple Question 5 with Samsung Questions 1-6);
- 18 • Whether to identify and break out applications in asking about infringement of
19 Apple’s utility patents (Apple Question 1; Samsung Questions 1-3);
- 20 • Whether to list Android version numbers and certain carrier names (Apple
21 Question 1; Samsung Questions 1-4, 12);
- 22 • Whether the jury should be asked whether the Gem infringes the ’381 patent and
23 whether the jury should be asked whether SEC is liable with respect to the Galaxy
24 Ace, Galaxy i9000, and Galaxy i9100 (Apple Questions 1,2, 10; Samsung
25 Questions 1-5);
- 26 • How to phrase the question about willfulness for patent infringement (*e.g.,* Apple
27 Questions 3, 15; Samsung Questions 6, 26) and for trade dress dilution or
28 infringement (Apple Question 12; Samsung Question 16);

- 1 • Whether, on trade dress claims, to ask a single question about dilution (Apple
2 Question 10) or a separate question addressing fame (Samsung Question 10-12);
- 3 • Whether to instruct the jury on liability for SEC, and if so whether to instruct only
4 on inducement (*e.g.*, Apple Questions 1, 2, 5, 11; Samsung Questions 3, 5, 15);
- 5 • Whether to include questions beyond a single interrogatory regarding the amount
6 of damages, once infringement or dilution is found (*compare* Apple Question 13
7 *with* Samsung questions 20-24);
- 8 • Whether to use “more likely than not” or “preponderance of the evidence” and
9 whether to use “highly probable” or “by clear and convincing evidence,” although
10 the parties agree that the verdict form should track the language of the jury
11 instructions;
- 12 • On the question of the validity of the Samsung patents, Samsung’s form notes the
13 grounds for invalidity, but Apple’s does not. (Compare Apple Question 16 and
14 Samsung Question 27).
- 15 • On Apple’s patent exhaustion claim, whether the standard should be phrased
16 “more likely than not” or “preponderance of the evidence.” (Compare Apple
17 Question 22 and Samsung Question 33). Apple’s version of this question includes
18 equitable estoppel, Samsung’s does not.
- 19 • Apple’s proposed verdict form includes a question on waiver for Samsung’s ’516
20 and ’941 patents. Samsung’s does not. (Apple Question 23).
- 21 • How the verdict form should distinguish, if at all, between the different Galaxy
22 Tab 10.1 models. (Apple Questions 2, 10 and Samsung Questions 4, 12, 13.)
- 23 • The order of the questions concerning the validity of Apple’s trade dresses.
24 (Apple Questions 6-9; Samsung Questions 8-10.)

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Dated: August 18, 2012

MORRISON & FOERSTER LLP

QUINN EMANUEL URQUHART &
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By: /s/ Michael A. Jacobs

By: /s/ Victoria F. Maroulis

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ATTESTATION OF E-FILED SIGNATURE

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Joint Statement Regarding Proposed Verdict Form. In compliance with General Order 45, X.B., I hereby attest that Victoria F. Maroulis has concurred in this filing.

Dated: August 18, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs