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TELECOMMUNICATIONS AMERICA, LLC
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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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 Defendants.
26

CASE NO. 12-cv-00630-LHK

**SAMSUNG’S OBJECTION TO APPLE’S
PROPOSED VERSION OF FEDERAL
JUDICIAL CENTER PATENT
INSTRUCTIONAL VIDEO**

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28

1 **Preliminary Statement**

2 Samsung objects to Apple's proposal to show the jury a version of the Federal Judicial
3 Center ("FJC") patent instructional video that repeatedly depicts Apple products being used by
4 actors, including with accompanying narration and text addressing innovation, patentability and
5 originality. Showing the jury such a video would be highly prejudicial to Samsung and would
6 threaten the impartiality of the jury. Samsung requests instead that the Court show the jury the
7 same version of the FJC instructional video that was shown to the jury in the 1846 case, which is
8 substantively the same as the version Apple proposes to use, and does not depict Apple products.

9 **Background**

10 On March 21, 2014, the Court ordered the parties "to bring a copy of the FJC patent video
11 to trial on March 31, 2014 and April 1, 2014 for presentation to the jury." (Dkt. 1490.) On
12 March 26, Samsung notified Apple that it intended to bring to the Court the same version of the
13 FJC patent video that was shown to the jury in the 1846 trial. On March 27, Apple responded:
14 "This video is outdated. We plan to bring the new FJC video."

15 Apple is apparently referring to a version of the FJC video that is available at
16 <http://www.youtube.com/watch?v=ax7QHQTbKQE>. This version of the video was posted to
17 YouTube on November 22, 2013, and is narrated by the Hon. Jeremy Fogel. A notation from the
18 FJC that accompanies the video as it appears on YouTube states as follows:

19 This brief video provides jurors in a patent case an explanation of what a patent is and the
20 process for obtaining it. It has been carefully crafted, in consultation with judges and
21 members of the bar, to present a balanced view of the patent process, but individual judges
22 will want to review it carefully and consult with counsel before deciding whether to use it
23 in a particular case.

24 Apple's proposed version of the FJC video includes several scenes in which Apple
25 products are depicted and used, including as follows:

- 26 • Beginning at the 2:55 mark, a series of Apple products are shown, including an iPad, a
27 newer model of a laptop computer, and an iPhone. The narration during this portion of
28 the video addresses how the disclosure of a patent may "inspire new inventions."

- 1 • Beginning at approximately the 4:10 mark, during the discussion of what an “invention” is, an actor playing an “inventor” is shown at a table using an Apple laptop computer.
- 2
- 3 • At the 4:35 mark, the requirements that a patent be new, useful and non-obvious are shown on the screen in front of a still image of an Apple computer.
- 4
- 5 • Beginning at the 5:13 mark, the actor depicting the inventor is shown meeting with an actor depicting a patent prosecution attorney in a law office, and again is using his Apple laptop computer.
- 6
- 7 • The inventor’s Apple computer is clearly visible again beginning at the 11:22 mark.

8 Below are screenshots that show certain of the instances in which Apple products are
 9 displayed during the version of the FJC video that Apple proposes to use:



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 21 On March 27, Samsung notified Apple that it “objects to the most recent FJC video given
 22 the prevalence of Apple products placed throughout the video,” and that it “contends the FJC
 23 video shown to the jury in the 1846 action is the one contemplated by the Court in its Order.”
 24 Apple has not responded to Samsung’s objection.

25 **Argument**

26 Samsung objects to Apple’s proposal to show the jury the version of the FJC video that
 27 depicts Apple products. As an instructional video presented to the jury by the Court for purposes
 28 of understanding the applicable patent law standards, and that is narrated by a federal judge and

1 replete with images of official government functions, such as activities of the PTO and federal
2 court proceedings, the jury will surely be—and indeed is intended to be—influenced by its
3 contents, including both the words spoken and the images shown. Those images include repeated
4 depictions of Apple products and the Apple logo, often shown at the same time that the
5 accompanying narration or text addresses innovation, creativity and patentability. In many
6 respects, the video could be incorrectly construed as an Apple promotional video, touting its
7 products and their originality. At a minimum, the video strongly suggests that Apple’s products
8 are innovative and patentable.

9 Because Apple’s alleged innovation is a central disputed issue in this trial, it would be
10 highly prejudicial to Samsung to show the jury—before any evidence is introduced—an official
11 instructional video that depicts Apple products in such a context. Doing so would raise serious
12 concerns about Samsung’s ability to obtain a “fair trial by ‘impartial’ jurors,” which is one of the
13 most “fundamental” interests that exists under the Constitution. *Gentile v. State Bar of Nevada*,
14 501 U.S. 1030, 1075 (1991). The Court has a duty to protect that fundamental interest, and
15 showing the jury the video Apple proposes to use would run counter to it. *See Sheppard v.*
16 *Maxwell*, 384 U.S. 333, 357-58 (1966) (“The courts *must* take such steps by rule and regulation
17 that will protect their processes from prejudicial outside interferences.”). Indeed, the FJC itself
18 recognizes that before the video is shown to a jury, “individual judges will want to review it
19 carefully and consult with counsel before deciding whether to use it in a particular case.” (*See*
20 FJC comment available at <http://www.youtube.com/watch?v=ax7QHQTbKQE>.) Because of the
21 risks of prejudice to Samsung here, the Court should decide not to use Apple’s proposed version
22 of the FJC video in this particular case.

23 Nor is there any need to show the jury Apple’s proposed version of the FJC video. This is
24 because the version of the FJC video that was shown to the jury in the first trial in the 1846 case
25 remains available at <http://www.youtube.com/watch?v=-q0mLrvw1Yc> and would serve precisely
26 the same purpose as the version Apple proposes to use, without the risk of prejudicing Samsung.
27 Samsung will bring this version of the video to Court on March 31. This video is materially
28 identical to the version Apple proposes to use, and it does not depict any products or brands at

1 issue in the trial. Apple has not identified any valid basis for why this version of the FJC video
2 would not be sufficient.¹

3 **Conclusion**

4 For the foregoing reasons, Samsung respectfully requests that the Court show the jury the
5 version of the FJC video that Samsung proposes to use, available at
6 <http://www.youtube.com/watch?v=-q0mLrvw1Yc>, and not the version of the video that Apple
7 proposes to use.

8
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20 INC., and SAMSUNG
21 TELECOMMUNICATIONS AMERICA, LLC
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25 ¹ Indeed, other judges in this district have approved of using the prior version of the FJC
26 video in recent trials. *See, e.g., Plantronics, Inc. v. Aliph, Inc.*, N.D. Cal. Case No. 3:09-cv-
27 01714-WHA, Transcript of Hearing Dated Feb. 25, 2014, at 91:4-7 (Judge Alsup: “There’s a
28 video that the [FJC] did that— I know they’ve updated it, but I still have the old one. I plan on
using that unless I hear an objection.”).