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[COUNSEL LISTED ON SIGNATURE PAGE]

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.

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

**JOINT CASE MANAGEMENT
STATEMENT**

Date: December 10, 2015
Time: 1:30 PM
Place: Courtroom 1, 5th Floor
Judge: Hon. Lucy H. Koh

1 Pursuant to the Court’s September 18, 2015, Order (Dkt. 3289), the parties submit this
2 Joint Case Management Statement in connection with the Case Management Conference
3 (“CMC”) scheduled for December 10, 2015.

4 **I. STATUS UPDATE**

5 **A. Enforcement of partial final judgment and costs.**

6 **Apple statement:**

7 After the Court entered partial judgment in Apple’s favor of \$548,176,477 on September
8 18, 2015, Samsung appealed on September 21. Samsung’s appeal was docketed on September
9 30. The same day, Apple filed a motion for summary affirmance. The Federal Circuit granted
10 Apple’s motion and summarily affirmed this Court’s partial final judgment two weeks later, on
11 October 13. Samsung filed a petition for rehearing en banc, which the court denied on November
12 19. The mandate issued on November 30, 2015. Samsung’s motion for approval of a
13 supersedeas bond and temporary stay pending appeal (Dkt. 3294) is therefore moot.

14 Apple’s motions to enforce surety liability with respect to the \$548 million partial
15 judgment and \$1.8 million costs judgment remain pending, as well as Samsung’s parallel motion
16 to vacate the Court’s costs judgment, all of which are set for hearing the same day as the case
17 management conference.

18 Samsung has confirmed to Apple that it will pay Apple the \$548 million partial judgment
19 directly. Samsung indicates that payment should be complete within 10 days of delivery of
20 Apple’s invoice to Samsung, which will take place on December 4. Payment should therefore be
21 complete by Monday, December 14. Once payment is received, Apple will withdraw the motion
22 to enforce with respect to the partial judgment. If Apple has not withdrawn the motion by
23 Wednesday, December 16, Apple requests that the Court grant the motion to enforce, as no
24 substantive opposition has been filed. Apple notes that Samsung purports to reserve rights to
25 obtain partial reimbursement in the future of judgment amounts it has paid. Apple disputes
26 Samsung’s asserted rights to reimbursement.

1 Samsung has indicated that it does not intend to pay Apple the \$1.8 million costs
2 judgment. For the reasons stated in Apple's briefing, the Court should grant Apple's motion to
3 enforce with respect to costs. (*E.g.*, Dkt. 3306.)

4 **Samsung's statement:**

5 With respect to the partial judgment, Samsung has made arrangements to complete
6 payment to Apple. Samsung informed Apple that it intends to make the payment 10 days after
7 receipt of the original invoice from Apple, which has not yet taken place. Samsung has told
8 Apple that it will make the payment by December 14 if Apple delivers the original invoice to
9 Samsung no later than December 4 KST. Samsung is paying the full amount of the judgment at
10 this time without deducting withholding taxes. Samsung acknowledges that an involuntary
11 obligation to pay arises from the issuance of the Federal Circuit's mandate and expiration of the
12 stay of execution. Nonetheless, Samsung continues to reserve all rights to obtain reimbursement
13 from Apple and/or payment by Apple of all amounts required to be paid as taxes. Samsung
14 requests that the Court release its supersedeas bond (Dkt. 3036) as soon as the judgment is paid.

15 Samsung further reserves all rights to reclaim or obtain reimbursement of any judgment
16 amounts paid by Samsung to any entity in the event the partial judgment is reversed, modified,
17 vacated or set aside on appeal or otherwise, including as a result of any proceedings before the
18 USPTO addressing the patents at issue or as a result of any petition for writ of certiorari filed with
19 the Supreme Court. Samsung notes that the Patent Trial and Appeal Board has issued a final
20 decision of invalidity on the '915 Patent, and Apple filed a notice of appeal to the Federal Circuit
21 in the USPTO last week. The appeal has not been docketed at the time of this filing.

22 Motions for costs have been set for hearing during the December 10 Case Management
23 Conference. As explained in Samsung's motion, because the Federal Circuit did not discuss costs
24 in its opinion partially reversing the judgment, the costs award was vacated
25 automatically. Controlling Ninth Circuit precedent establishes a default rule that "[w]here a
26 reviewing court reverses a district court's judgment for the prevailing party . . . both the
27 underlying judgment and the taxation of costs undertaken pursuant to that judgment are
28 reversed." *Amarel v. Connell*, 102 F.3d 1494, 1523 (9th Cir. 1997) (citing *Farmer v. Arabian*

1 *American Oil Co.*, 379 U.S. 227 (1964), disapproved of on other grounds by *Crawford Fitting Co.*
2 *v. J.T. Gibbons, Inc.*, 482 U.S. 437, 443 (1987)) In the alternative, vacatur of the costs award is
3 warranted because the factual bases for the award no longer apply in light of the Federal Circuit's
4 decision reducing the damages award by over \$380 million and reversing the judgment for Apple
5 on its trade dress claims. The question of costs should be addressed after remand proceedings are
6 completed. *See Amarel*, 102 F.3d at 1024 (“[i]nstead of attempting to award partial costs at this
7 juncture, the district court should await the outcome of the [remaining] claim [on remand] to
8 ascertain whether allocation of costs is necessary.”)

9 For the reasons stated in Samsung's Opposition to Apple's Motion to Enforce Surety
10 Liability With Respect to Costs Judgment (Dkt. 3298) and Samsung's Motion to Confirm Vacatur
11 of Costs Award or, in the Alternative, for an Order Holding the Costs Award is Vacated Pursuant
12 to Federal Rule of Civil Procedure 60(b)(5) (Dkt. 3279), the Court should deny Apple's Motion to
13 Enforce and confirm that its prior costs award (Dkt. 3193) has been vacated. In the event
14 Samsung is ordered to pay costs, it will pay directly.

15 **B. Status of expert discovery regarding remand trial.**

16 The parties exchanged expert reports on November 6, 2015. Depositions of the parties'
17 experts proceeded on December 2 and December 3. Pursuant to the schedule set by the Court, the
18 parties will file motions to strike on December 18.

19 **C. Supplemental damages and prejudgment interest**

20 **Apple's Statement:**

21 Apple seeks leave to file a motion for supplemental damages and interest. As Apple set
22 out in the parties' joint submission on October 9, 2015 (Dkt. 3316), the products for which Apple
23 is entitled to supplemental damages were included in the damages verdict. Samsung has
24 indicated that it wants to press new noninfringement arguments, but it could have made those
25 arguments at the 2012 trial. Moreover, Samsung did not challenge the Court's methodology on
26 appeal. As a result, as Apple suggested in the September 11, 2015, joint case management
27 statement, the Court may now do an accounting for supplemental damages and prejudgment
28 interest via motion. No additional discovery is required.

1 **Samsung’s Statement:**

2 Samsung opposes Apple’s request for leave to file for supplemental damages at this time.
3 Samsung agrees with the Court’s repeated statements that it would be more appropriate to address
4 supplemental damages after the March 2016 trial rather than before.

5 As shown in Samsung’s submissions to the Court, Samsung’s design arounds are not new,
6 and Apple has been fully aware of them for years. Some design arounds were introduced in the
7 prior trial, while others existed earlier, although they were barred from it, and one did not exist at
8 the time of trial but was the subject of discovery in the post-trial injunction phase. In the October
9 9, 2015 filing (Dkt. 3316), Apple does not dispute any of the non-infringing design arounds as
10 specifically identified by Samsung. Instead, Apple argues that Samsung waived the right to
11 defend itself against Apple’s request for excessive and unjustified supplemental damages—which
12 it did not—and that this Court intended to award supplemental damages based on the model
13 number used on the phone, no matter that there is no dispute that the phone does not infringe
14 Apple’s IP (such as damages on white phones for a patent covering only black phones).

15 **II. ADR**

16 The parties participated in a settlement conference with Magistrate Judge Spero on
17 November 2, 2015. That process is complete and did not result in settlement.

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Dated: December 3, 2015

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ATTESTATION OF E-FILED SIGNATURE

I, Harold J. McElhinny, am the ECF User whose ID and password are being used to file this Joint Case Management Statement. In compliance with Local Rule 5-1(i)(3), I hereby attest that Victoria F. Maroulis has concurred in this filing.

Dated: December 3, 2015

/s/ Harold J. McElhinny
HAROLD J. MCELHINNY