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Attorneys for Plaintiff and Counterclaim-Defendant Apple Inc.

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. 12-cv-00630-LHK (PSG)

**APPLE INC.'S MOTION TO
SUPPLEMENT THE RECORD
REGARDING SAMSUNG'S GALAXY S
III PRODUCT**

Hearing:

Date: June 7, 2012
Time: 1:30 P.M.
Place: Courtroom 8, 4th Floor
Judge: Hon. Lucy H. Koh

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,

Counterclaim-Plaintiffs,

v.

APPLE INC., a California corporation,

Counterclaim-Defendant.

1 Apple has moved to preliminarily enjoin Samsung's infringing Galaxy Nexus smartphone and
2 any infringing devices that are not more than colorably different than that phone. *See* Proposed Order
3 (D.I. 11). Apple now moves, pursuant to Local Rule 7-3(d), to supplement the record regarding
4 Samsung's newest infringing smartphone, the Galaxy S III, which is the successor smart phone to the
5 Galaxy Nexus.¹

6 Samsung released the Galaxy S III in the United Kingdom on May 29, 2012, and several of
7 the major U.S. carriers have announced that they will begin selling the Galaxy S III in the United
8 States on June 21, 2012. According to press reports, Samsung has already sold *over nine million pre-*
9 *orders* of the Galaxy S III; indeed, the Galaxy S III has been reported to be *the most extensively pre-*
10 *ordered piece of consumer electronics in history*. *See* Ex. A, Declaration of Emily L. Fedman in
11 Support of Apple's Motion to Supplement the Record ("Fedman Decl."), Exs. 4-6.

12 Apple has been able to obtain the Galaxy S III sold in the United Kingdom and determined
13 that this device clearly infringes at least two of the Apple patents at issue in the preliminary
14 injunction motion for the exact same reasons as the Galaxy Nexus. Attached as exhibit B is the
15 Supplemental Declaration of Dr. Polish, in which he explains that the Galaxy S III contains the same
16 features accused of infringing U.S. Patent No. 8,086,604 (Unified Search) as the Galaxy Nexus, and
17 that the S III infringes the patent in precisely the same way as the Galaxy Nexus. Attached as exhibit
18 C is the supplemental declaration of Dr. Mowry, in which he explains that the Galaxy S III also
19 contains the same features accused of infringing U.S. Patent No. 5,946,647 (Links for Structures) as
20 the Galaxy Nexus, and infringes the patent in precisely the same way as the Galaxy Nexus. Both Drs.
21 Polish and Mowry explain, moreover, that the Galaxy S III and the Galaxy Nexus are based on the
22 same Android 4.0 platform (Ice Cream Sandwich).² Neither Dr. Polish nor Dr. Mowry assert or
23 analyze any new patent claims, present any new theories, or introduce any new infringement issues
24

25 ¹ *See, e.g.,* Vellturo Reply Declaration (submitted May 14, 2012) (D.I. 178) Ex. 35 at *784.

26 ² Apple's experts are still analyzing the Galaxy S III to determine the extent to which it infringes the
27 other two patents Apple raised in its motion (as well as other Apple patents). Because it is imperative
28 that Apple obtain relief against the imminent launch of the Galaxy S III as soon as possible, however,
Apple will limit its current request for preliminary relief against the Galaxy S III to the '604 and '647
patents, because it is clear that infringement can be shown with respect to these patents based on the
current record.

1 for this Court to decide. Because the Galaxy S III contains two of the exact infringing features
2 already at issue with respect to the Galaxy Nexus, the S III is not more than colorably different from
3 the Galaxy Nexus, and falls within the scope of Apple's current proposed order submitted in
4 connection with its motion for a preliminary injunction.

5 The Galaxy S III will also irreparably harm Apple for the same reasons as the Galaxy Nexus,
6 but on a much greater scale. Apple has submitted press reports detailing the significant pre-sales and
7 sales Samsung has enjoyed for the Galaxy S III. Fedman Decl. Exs. 3-5. The central premise of
8 Samsung's opposition to Apple's motion for a preliminary injunction was that the Galaxy Nexus had
9 not sold sufficiently well to cause severe enough harm to Apple; while that argument is legally and
10 factually untenable, it is entirely inapplicable with respect to the Galaxy S III, which reportedly will
11 sell phenomenally well immediately upon launch. Also attached are announcements by Sprint,
12 Verizon, and T-Mobile indicating that they will each begin selling the Galaxy S III on June 21, 2012.
13 *Id.* at Exs. 6-8.

14 Given the extent to which the Galaxy S III infringes and will cause immediate and irreparable
15 harm to Apple, it is imperative that this Court have an opportunity to consider and rule upon Apple's
16 motion for a preliminary injunction before the Galaxy S III is launched in the United States. As a
17 result, Apple requested that Samsung confirm that it would not launch the Galaxy S III in the United
18 States until this Court has had such an opportunity. *Id.* at Ex. 1. Samsung refused, stating that
19 "Apple's pending Preliminary Injunction Motion will have no bearing on the release date of the
20 Galaxy S III." *Id.* at Ex. 2.

21 CONCLUSION

22 Apple respectfully requests that the record be supplemented with the material attached hereto.
23 With this supplemental evidence, the record conclusively demonstrates that a preliminary injunction
24 is warranted with respect to both the Galaxy Nexus and the Galaxy S III.

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GIBSON, DUNN & CRUTCHER LLP

Dated: June 5, 2012

By: /s/ H. Mark Lyon
H. Mark Lyon

Attorneys for Plaintiff Apple Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Civil 5 Local Rule 5.4, and will be served on all counsel for Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC who have consented to electronic service in accordance with Civil Local Rule 5.4 via the Court's ECF system.

Date: June 5, 2012

By: /s/ Mark Lyon

H. Mark Lyon