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10 Attorneys for Plaintiff
 APPLE INC.

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

15 APPLE INC., a California corporation,

16 Plaintiff,

17 v.

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

21 Defendants.
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Case No. 11-cv-01846-LHK

JURY TRIAL DEMAND

**AMENDED COMPLAINT FOR
 FEDERAL FALSE DESIGNATION
 OF ORIGIN AND UNFAIR
 COMPETITION, FEDERAL
 TRADEMARK INFRINGEMENT,
 FEDERAL TRADE DRESS
 DILUTION, STATE UNFAIR
 BUSINESS PRACTICES,
 COMMON LAW TRADEMARK
 INFRINGEMENT, UNJUST
 ENRICHMENT, AND PATENT
 INFRINGEMENT**

1 Plaintiff Apple Inc. (“Apple”) complains and alleges as follows against Defendants
2 Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung
3 Telecommunications America, LLC (collectively “Samsung”).

4 **THE NATURE OF THE ACTION**

5 1. Apple revolutionized the telecommunications industry in 2007 when it introduced
6 the wildly popular iPhone, a product that dramatically changed the way people view mobile
7 phones. Reviewers, analysts and consumers immediately recognized the iPhone as a “game
8 changer.” Before the iPhone, cell phones were utilitarian devices with key pads for dialing and
9 small, passive display screens that did not allow for touch control. The iPhone was radically
10 different. In one small and lightweight handheld device, it offered sophisticated mobile phone
11 functions, a multi-touch screen allowing users to control the phone with their fingers, music
12 storage and playback, a mobile computing platform for handheld applications, and full access to
13 the Internet. These features were combined in an elegantly designed minimalist product with a
14 distinctive user interface, icons, and eye-catching displays that gave the iPhone an unmistakable
15 look.

16 2. Those design features were carried over to the iPod touch, another product that
17 Apple introduced in 2007. The iPod touch has a product configuration and physical appearance
18 that is a further iteration of the iPhone product design. Moreover, the iPod touch utilizes the same
19 user interface icons and screen layout as the iPhone, displaying the unmistakable iPhone
20 appearance.

21 3. Apple introduced another revolutionary product, the iPad, in 2010. The iPad is an
22 elegantly designed computer tablet with a color touch screen, a user interface reminiscent of the
23 iPhone’s user interface, and robust functionality that spans both mobile computing and media
24 storage and playback. Because of its innovative technology and distinctive design, the iPad
25 achieved instant success.

26 4. Apple’s creative achievements have resulted in broad intellectual property
27 protection for Apple’s innovations, including utility and design patents, trademarks, and trade
28 dress protection. Nevertheless, Apple’s innovations have been the subject of emulation by its

1 competitors, who have attempted to catch up with Apple's innovative products. Samsung has
2 been even bolder, creating products that blatantly imitate the appearance of Apple's products to
3 capitalize on Apple's success. For example, Samsung recently introduced the Galaxy line of
4 mobile phones and computer tablets, all of which use the Google Android software platform, to
5 compete with the iPhone and iPad. Instead of pursuing independent product development,
6 Samsung has chosen to slavishly copy Apple's innovative technology, distinctive user interfaces,
7 and elegant and distinctive product and packaging design, in violation of Apple's valuable
8 intellectual property rights. As alleged below in detail, Samsung has made its Galaxy phones and
9 computer tablets work and look like Apple's products through widespread patent, trademark, and
10 trade dress infringement. Samsung has even copied Apple's distinctive product packaging.

11 5. By this action, Apple seeks to put a stop to Samsung's illegal conduct and obtain
12 compensation for the violations that have occurred thus far.

13 **THE PARTIES**

14 6. Apple is a California corporation having its principal place of business at 1 Infinite
15 Loop, Cupertino, California 95014.

16 7. Samsung Electronics Co., Ltd. (referred to individually herein as "SEC") is a
17 Korean corporation with its principal offices at 250, 2-ga, Taepyong-ro, Jung-gu, Seoul, 100-742,
18 South Korea. On information and belief, SEC is South Korea's largest company and one of
19 Asia's largest electronics companies. SEC designs, manufactures, and provides to the U.S. and
20 world markets a wide range of products, including consumer electronics, computer components,
21 and myriad mobile and entertainment products.

22 8. Samsung Electronics America, Inc. (referred to individually herein as "SEA") is a
23 New York corporation with its principal place of business at 105 Challenger Road, Ridgefield
24 Park, New Jersey 07660. On information and belief, SEA was formed in 1977 as a subsidiary of
25 SEC and markets, sells, or offers for sale a variety of consumer electronics, including TVs,
26 VCRs, DVD and MP3 players, and video cameras, as well as memory chips and computer
27 accessories, such as printers, monitors, hard disk drives, and DVD/CD-ROM drives. On
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1 information and belief, SEA also manages the North American operations of Samsung
2 Telecommunications America, Samsung Electronics Canada, and Samsung Electronics Mexico.

3 9. Samsung Telecommunications America, LLC (referred to individually herein as
4 “STA”) is a Delaware limited liability company with its principal place of business at 1301 East
5 Lookout Drive, Richardson, Texas 75081. On information and belief, STA was founded in 1996
6 as a subsidiary of SEC and markets, sells, or offers for sale a variety of personal and business
7 communications devices in the United States, including cell phones.

8 **JURISDICTION**

9 10. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 (action arising
10 under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any Act of
11 Congress relating to patents or trademarks); 28 U.S.C. § 1338(b) (action asserting claim of unfair
12 competition joined with a substantial and related claim under the trademark laws); and 28 U.S.C.
13 § 1367 (supplemental jurisdiction).

14 11. This Court has personal jurisdiction over SEC, SEA, and STA because each of
15 these Samsung entities has committed and continues to commit acts of infringement in violation
16 of 35 U.S.C. § 271 and 15 U.S.C. §§ 1114, 1125, and places infringing products into the stream
17 of commerce, with the knowledge or understanding that such products are sold in the State of
18 California, including in this District. The acts by SEC, SEA, and STA cause injury to Apple
19 within this District. Upon information and belief, SEC, SEA, and STA derive substantial revenue
20 from the sale of infringing products within this District, expect their actions to have consequences
21 within this District, and derive substantial revenue from interstate and international commerce.

22 **VENUE AND INTRADISTRICT ASSIGNMENT**

23 12. Venue is proper within this District under 28 U.S.C. §§ 1391(b),(c) because
24 Samsung transacts business within this District and offers for sale in this District products that
25 infringe the Apple patents, trade dress, and trademarks. In addition, venue is proper because
26 Apple’s principal place of business is in this District and Apple suffered harm in this District.
27 Moreover, a substantial part of the events giving rise to the claim occurred in this District.
28 Pursuant to Local Rule 3-2(c), intellectual property actions are assigned on a district-wide basis.

1 **BACKGROUND**

2 **APPLE'S INNOVATIONS**

3 13. Apple is a leading designer and manufacturer of handheld mobile devices,
4 personal computers, and portable media players. As a result of its significant investment in
5 research and development, Apple has developed innovative technologies that have changed the
6 face of the computer and telecommunications industries. One such pioneering technology is
7 Apple's Multi-Touch™ user interface, which allows users to navigate their iPhone, iPod touch,
8 and iPad devices by tapping and swiping their fingers on the screen.

9 14. In 2007, Apple revolutionized the telecommunications industry when it introduced
10 the iPhone. The iPhone combined in one small and lightweight handheld device sophisticated
11 mobile phone functions, media storage and playback, the Multi-Touch user interface, mobile
12 computing power to run diverse pre-installed and downloadable applications, and functionality to
13 gain full access to the Internet. These features were combined in an elegant glass and metal case
14 with a distinctive user interface that gave the iPhone an immediately recognizable look.

15 15. As a direct result of its innovative and distinctive design and its cutting edge
16 technological features, the iPhone was an instant success, and its appearance immediately became
17 uniquely associated with Apple as its source. Reviewers and analysts universally praised the
18 iPhone for its “game changing” features. *Time* magazine listed the iPhone number one on its List
19 of Top Ten Gadgets for 2007, noting that “[t]he iPhone changed the way we think about how
20 mobile media devices should look, feel and perform.” *The New York Times* called it
21 “revolutionary.” Apple subsequently introduced the iPhone 3G, the iPhone 3GS, and iPhone 4.
22 As of March 2011, more than 108 million iPhones had been sold worldwide.

23 16. While the iPhone was an instant success, there was nothing instant about the
24 design process. Over the course of several years, Apple had teams of people working on
25 developing each aspect of the design of the phone itself — the shape of the phone, the materials
26 used, and the size and placement of the mask that frames the screen — as well as the Multi-Touch
27 user interface, to make a product that looked and felt entirely different from prior phones on the
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1 market. The end result was a very clean shape for the phone, with an entirely flat glass panel for
2 the front, gently rounded corners and integrated casing, and intuitive touch features.

3 17. Before Apple's introduction of the first iPhone product, no other company was
4 offering a phone with these features. Prior mobile phones were often bulkier and contained
5 physical keypads. Some had a rocker-style navigation button and sets of buttons for numbers and
6 calling features. Others had a front panel with a partial or full QWERTY keyboard and a screen.
7 None had the clean lines of the iPhone, which immediately caused it to stand apart from the
8 competition.

9 18. Also in 2007, Apple launched the iPod touch, a widescreen, touch-controlled iPod
10 that is great for playing video and running third-party software applications, among other things.
11 The iPod touch incorporated the distinct style of the iPhone and also became an immediate
12 success. By March 2011, Apple had sold over 60 million iPod touch units.

13 19. After introducing the iPhone mobile phone and iPod touch media player, Apple
14 continued to innovate and achieve success with a series of pioneering designs — more
15 sophisticated, advanced versions of the iPhone, and then, in 2010, the iPad. The iPad is a tablet
16 computer with a color 9.7-inch touch screen that allows users to manipulate icons and data with
17 their fingers in the same fashion as the iPhone and iPod touch screens. Reviewers and analysts
18 immediately recognized the iPad as a revolutionary product, describing it as a “winner” and a
19 “new category of device” that would “replace laptops for many people.” In its first 80 days on
20 the market, Apple sold 3 million iPads. By March 2011, Apple had sold over 19 million iPads.

21 20. No computer product that preceded the iPad looked like the iPad. Instead, the
22 iPad's design was built upon design elements in other Apple products — namely, the iPhone and
23 the iPod touch, thereby extending elements of the unique and innovative Apple design and trade
24 dress to a new product — tablet computers.

25 21. Apple's iPhone, iPad, and iPod touch products have been extensively advertised
26 throughout the United States in virtually every media outlet, including network and syndicated
27 television, the Internet, billboards, magazines, and newspapers — with the vast majority of the
28 advertisements featuring photographs of the distinctive design of these products. Apple's

1 advertising expenditures for these products for fiscal years 2007-2010 were in excess of \$2
2 billion.

3 22. In addition, Apple's iPhone, iPod touch, and iPad products have received
4 unsolicited comments and attention in print and broadcast media throughout the world. Each new
5 generation of these Apple products is the subject of positive commentary and receives unsolicited
6 praise from independent media commentators. Frequently, the unsolicited commentaries are
7 accompanied by images of the iPhone, iPad, and iPod touch products. For example, images of
8 the iPhone appeared on the front pages of *The New York Times* and *USA Today* when the product
9 was first announced in January 2007, and was prominently featured again in both publications
10 when the product went on sale in June 2007. Images of the iPad similarly appeared on the front
11 pages or lead sections of *The New York Times*, *The Wall Street Journal*, and *USA Today* when
12 Apple announced the product in January 2010, and also appeared on the front pages of *The New*
13 *York Times* and *USA Today* when the product went on sale in April 2010. The iPad product was
14 also the subject of cover stories in *Time* and *Newsweek*, with an image of the product appearing
15 on the cover of *Newsweek*.

16 23. The Apple iPhone, iPod touch, and iPad product designs have come to represent
17 and symbolize the superb quality of Apple's products and enjoys substantial goodwill among
18 consumers. The iPad, iPhone, and iPod touch products have garnered widespread acclaim for
19 their unique product designs and outstanding performance. *Time* magazine named the iPad one of
20 the 50 Best Inventions of the Year 2010, *Popular Science* heralded it as the Top Tablet in its Best
21 of What's New 2010 feature, and the popular technology blog Engadget selected the device as
22 both the 2010 Editors' Choice Gadget of the Year and Tablet of the Year. In addition, the iPad
23 received a 2010 Red Dot Award for Product Design and was nominated for the 2010 People's
24 Design Award.

25 24. In addition to the recognition described above, the iPhone products have received
26 many other awards, including a 2008 Design and Art Direction (D&AD) "Black Pencil" award, a
27 2008 International Forum (iF) Product Design Award, and the 2008 International Design
28 Excellence Award (IDEA) Best in Show. More recently, Engadget named the iPhone 4 the 2010

1 Editors' Choice Phone of the Year, and the device received the Best Mobile Device award at the
 2 Mobile World Congress in February 2011. Engadget also included the iPhone in its feature on
 3 the 10 Gadgets That Defined the Decade. The iPod touch won the 2008 D&AD "Yellow Pencil"
 4 award as well as the 2008 iF Product Design Award.

5 25. On May 8, 2011, Apple topped the BrandZ Top 100 ranking of the most valuable
 6 global brands, with an 84 percent year-over-year increase in brand value. The increase in brand
 7 value was attributed to "successful iterations of existing products like the iPhone, creation of the
 8 tablet category with iPad, and anticipation of a broadened strategy making the brand a trifecta of
 9 cloud computing, software, and innovative, well-designed devices."

10 **APPLE'S INTELLECTUAL PROPERTY RIGHTS**

11 **Apple's Utility Patents**

12 26. Apple has protected its innovative designs and cutting-edge technologies through a
 13 broad range of intellectual property rights. Among those rights are the utility patents listed
 14 below. Apple's utility patents cover many of the elements that the world has come to associate
 15 with Apple's mobile devices. These include patents covering fundamental features of the Multi-
 16 Touch™ user interface that enable Apple's devices to understand user gestures and to respond by
 17 performing a wide variety of functions, such as selecting, scrolling, pinching, and zooming.

18 27. In addition, Apple has patented many of the individual features that together add
 19 up to the high-quality experience that users have come to associate with Apple products. Apple's
 20 innovations — ranging from the arrangement of text messages on the screen, to the way images
 21 and documents appear to "bounce back" when the user scrolls too far down, to movement of the
 22 buttons — have been recognized by the United States Patent and Trademark Office as patent-
 23 worthy contributions to the art.

24 28. Among the patents that Apple has been awarded are the patents listed below,
 25 attached as Exhibits 1-8, to which Apple owns all rights, title, and interest.

Patent Number	Title
7,812,828 (the "828 Patent")	Ellipse Fitting for Multi-Touch Surfaces

Patent Number	Title
6,493,002 (the “002 Patent”)	Method and Apparatus for Displaying and Accessing Control and Status Information in a Computer System
7,469,381 (the “381 Patent”)	List Scrolling and Document Translation, Scaling and Rotation on a Touch-Screen Display
7,844,915 (the “915 Patent”)	Application Programming Interfaces for Scrolling Operations
7,853,891 (the “891 Patent”)	Method and Apparatus for Displaying a Window for a User Interface
7,663,607 (the “607 Patent”)	Multipoint Touchscreen
7,864,163 (the “163 Patent”)	Portable Electronic Device, Method, and Graphical User Interface for Displaying Structured Electronic Documents
7,920,129 (the “129 Patent”)	Double-Sided Touch-Sensitive Panel With Shield And Drive Combined Layer

Apple’s Design Patents

29. Apple also has protected its innovative designs through design patents issued by the United States Patent and Trademark Office. The Apple design patents cover the unique and novel ornamental appearance of Apple’s devices, which include features such as the black face, bezel, the matrix of application icons, and a rim surrounding a flat screen. Apple owns all rights, title, and interest in and to each of the asserted design patents listed below, copies of which are attached as Exhibits 9-15.

Patent Number	Title
D627,790 (the “D790 Patent”)	Graphical User Interface For a Display Screen or Portion Thereof
D617,334 (the “D334 Patent”)	Graphical User Interface For a Display Screen or Portion Thereof
D604,305 (the “D305 Patent”)	Graphical User Interface For a Display Screen or Portion Thereof

1	Patent Number	Title
2	D593,087 (the “D087 Patent”)	Electronic Device
3	D618,677 (the “D677 Patent”)	Electronic Device
4	D622,270 (the “D270 Patent”)	Electronic Device
5	D504,889 (the “D889 Patent”)	Electronic Device
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Apple’s Trade Dress

30. Apple holds trade dress protection in the design, appearance, and distinctive user interfaces of the iPhone, the iPod touch, and the iPad products released to date.

iPhone Trade Dress

31. The iPhone design is radically different from the devices that preceded it. Many early phones had a rocker-style navigation button with sets of buttons for calling features and number dialing, while the first smart phones and PDA devices had a front panel with a partial or full QWERTY keyboard and a screen. The front panel typically was formed from the same material that was used for the back of the phone, or the phone may have had a clamshell design so that the screen could be closed over the keyboard.

32. In contrast, the iPhone had a distinctive shape and appearance — a rectangular product with four evenly rounded corners, a flat clear face covering the front of the product, a large display screen under the clear surface, substantial black borders above and below the display screen and narrower black borders on either side of the screen under the clear surface, a metallic bezel around the flat clear surface, and on the display when the device is turned on, a matrix of colorful square icons with evenly rounded corners and a bottom row (or “dock”) of colorful square icons set off from the other icons, which does not change as other pages of the user interface are viewed — which are the embodiment of Apple’s innovative iPhone user interface. The iPhone did not include a physical keyboard.

33. The combination of elements of the iPhone product design is distinctive and serves to identify Apple as the source of the iPhone products. These elements are not merely functional

1 and the overall product design is not required to achieve any particular function. Apple's
2 competitors have numerous options from which they can choose for their own product designs.

3 34. The end result is an elegant product that is more accessible, easier to use, and
4 much less technically intimidating than previously available smart phones and PDAs. The iPhone
5 product design immediately became closely associated with Apple.

6 **iPhone 3G Trade Dress**

7 35. The iPhone 3G product design included all of the elements of the iPhone trade
8 dress — a rectangular product with four evenly rounded corners, a flat clear face covering the
9 front of the product, a metallic bezel around the flat clear surface, a large display screen under the
10 clear surface, substantial black borders above and below the display screen and narrower black
11 borders on either side of the screen under the clear surface, and on the display when the device is
12 turned on, a matrix of colorful square icons with evenly rounded corners, and a bottom dock of
13 colorful square icons set off from the other icons, which does not change as other pages of the
14 user interface are viewed — and added a row of small dots on the display screen when the device
15 is turned on. The iPhone 3G product design, as shown below, immediately became closely
16 associated with Apple. Apple continues to use the design for its iPhone 3GS generation phone.



27 36. The combination of elements of the iPhone 3G product design is distinctive and
28 serves to identify Apple as the source of the iPhone 3G and iPhone 3GS products. Moreover,

1 these elements are not merely functional and the overall product design is not dictated by
2 function. Apple's competitors have many alternative product designs available to them.

3 **iPhone 4 Trade Dress**

4 37. The iPhone 4 product design also incorporates the elements of the iPhone and the
5 iPhone 3G trade dress — a rectangular product with four evenly rounded corners, a flat clear face
6 covering the front of the product, a large display screen under the clear surface, substantial neutral
7 (black or white) borders above and below the display screen and narrower neutral borders on
8 either side of the screen under the clear surface, and on the display when the device is turned on, a
9 row of small dots, a matrix of colorful square icons with evenly rounded corners, and a bottom
10 dock of colorful square icons with evenly rounded corners set off from the other icons, which
11 does not change as other pages of the user interface are viewed. The iPhone 4, however, has a
12 much flatter profile than previous versions of the iPhone. Moreover, there is a thin metallic band
13 around the outside edge of the phone, creating a thin rim adjacent to the face of the phone. The
14 result is a flatter-looking profile that is less rounded than previous iPhone products, as shown
15 below. The iPhone 4 product design immediately became closely associated with Apple.





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10 38. The combination of elements of the iPhone 4 product design is distinctive and
11 serves to identify Apple as the source of the iPhone 4 products. These elements are not merely
12 functional and the overall product design is not required to achieve any particular function. There
13 are numerous alternatives available to Apple's competitors for their product designs.

14 39. Extending its innovative style to its product packaging, Apple created an equally
15 elegant and distinctive packaging for the iPhone products that have been available to date. The
16 packaging features a compact black or black-and-white box with eye-catching metallic silver
17 lettering on a matte black surface, and with the sides of the top of the box extending down to
18 cover the bottom portion of the box completely. The outside of the box has a clean style — with
19 minimal wording and a simple, prominent photograph of the iPhone product itself. The style
20 carries over within the box — with the iPhone device cradled within a specially designed
21 monochromatic display, so that the iPhone, and nothing else, is immediately visible when the box
22 is opened. The accessories and instructional materials are hidden from view underneath the
23 iPhone tray — emphasizing the accessible nature of the iPhone itself. The design entices
24 purchasers to pick up the iPhone and try it out, without worrying that it is complicated.

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40. As with the product configuration itself, the combination of elements of the iPhone packaging is distinctive and serves to identify Apple as the source of the iPhone products. The overall packaging design is not required to achieve any particular function — and there are a plethora of alternative packaging options available to Apple’s competitors.

iPod touch Trade Dress

41. The iPod touch has a product configuration and physical appearance that builds upon the original iPhone design. It is a rectangular product with four evenly rounded corners, a flat clear face covering the front of the product, a large display screen under the clear surface, substantial black borders above and below the display screen and narrower black borders on either side of the screen under the clear surface, and on the display when the device is turned on, a row of small dots, a matrix of colorful square icons with evenly rounded corners within the display screen, and a bottom dock of colorful square icons with four evenly rounded corners set

1 off from the other icons, which does not change as other pages of the user interface are viewed —
 2 a combination that is the embodiment of Apple’s innovative iPod touch user interface.

3 42. As shown below, the end result is a simple and elegant product that invites use.
 4 Like the iPhone design, the iPod touch design immediately became closely associated with Apple.



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 16 43. The combination of elements of the iPod touch product design is distinctive and
 17 serves to identify Apple as the source of the iPod touch products. These elements are not merely
 18 functional and the overall product design is not dictated by function. There are many alternative
 19 product designs that Apple’s competitors can use.

20 **iPad Trade Dress**

21 44. Because it shares some trade dress elements with the iPhone products, the iPad
 22 resembles a “grown-up iPhone.” It is a rectangular product with four evenly rounded corners, a
 23 flat clear surface covering the front of the product, a metallic rim around the clear flat surface, a
 24 large display screen under the clear surface, substantial neutral (black or white) borders on all
 25 sides of the display screen under the clear surface, and when the device is turned on, a matrix of
 26 colorful icons within the display screen. The overall iPad design has an extremely thin side
 27 profile, which makes the product appear to be relatively flat when placed on a table. To highlight
 28

1 its distinctive shape of the back panel, Apple has featured the profile of the iPad 2 product in
2 thousands of advertisements.

3 **iPad**



13
14 **iPad 2**



1 45. The combination of elements of the iPad product design is distinctive and serves to
2 identify Apple as the source of the iPad products. These elements are not merely functional, and
3 the overall product design is not required to achieve any particular function. Apple’s competitors
4 have many alternatives available to them for their product designs.

5 46. The packaging for the iPad is similarly innovative and, like the iPhone products,
6 utilizes a box that, when opened, prominently displays the product so that it is immediately
7 visible, with all other accessories and materials layered beneath. Also similar to the iPhone
8 packaging, the outside of the iPad box has a clean style — with minimal silver metallic wording
9 and a simple, prominent, nearly full-size photograph of the iPad product on a white background.



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21 47. The combination of elements of the iPad packaging is distinctive and serves to
22 identify Apple as the source of the products. These elements are not merely functional and there
23 are numerous packaging alternatives available to Apple’s competitors.

24 **Trade Dress Registrations**

25 48. Apple owns three registrations for the iPhone design and configuration.

26 49. U.S. Registration No. 3,470,983 is for the overall design of the product, including
27 the rectangular shape, the rounded corners, the silver edges, the black face, and the display of
28 sixteen colorful icons. Exhibit 16 is a true and correct copy of U.S. Registration No. 3,470,983.

1 50. U.S. Registration No. 3,457,218 is for the configuration of a rectangular handheld
2 mobile digital electronic device with rounded corners. Exhibit 17 is a true and correct copy of
3 U.S. Registration No. 3,457,218.

4 51. U.S. Registration No. 3,475,327 is for a rectangular handheld mobile digital
5 electronic device with a gray rectangular portion in the center, a black band above and below the
6 gray rectangle and on the curved corners, and a silver outer border and side. Exhibit 18 is a true
7 and correct copy of U.S. Registration No. 3,475,327.

8 **Trade Dress Applications**

9 52. Apple also owns three applications for the iPad design and configuration and one
10 application for the iPhone 4 design and configuration.

11 53. U.S. Application Serial No. 77/921,838 is for the configuration of a digital
12 electronic device with a screen on the front of the device, and a circle at the bottom center of the
13 front — the iPad. Exhibit 19 is a true and correct copy of U.S. Application Serial
14 No. 77/921,838.

15 54. U.S. Application Serial No. 77/921,829 is for a configuration of a digital electronic
16 device, with a gray screen, a black border around the screen, a black concave circle at the bottom
17 of the border, and silver sides — also the iPad. Exhibit 20 is a true and correct copy of U.S.
18 Application Serial No. 77/921,829.

19 55. U.S. Application Serial No. 77/921,869 is for the overall design of the product,
20 including a black screen and silver casing, with thirteen colorful square icons arranged in four
21 rows on the face of the screen, and a concave black circle with the outline of a gray square in the
22 center below the bottom row of icons — again, the iPad. Exhibit 21 is a true and correct copy of
23 U.S. Application Serial No. 77/921,869.

24 56. U.S. Application Serial No. 85/299,118 is for the configuration of a rectangular
25 handheld mobile digital electronic device with evenly rounded corners — the iPhone 4. Exhibit
26 22 is a true and correct copy of U.S. Application Serial No. 85/299,118.

iPhone Trade Dress at Issue

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2 57. The following elements of Apple’s product designs comprise the “Apple iPhone
3 Trade Dress” at issue in this case:

- 4 • a rectangular product with four evenly rounded corners;
- 5 • a flat clear surface covering the front of the product;
- 6 • the appearance of a metallic bezel around the flat clear surface;
- 7 • a display screen under the clear surface;
- 8 • under the clear surface, substantial black borders above and below the display
9 screen and narrower black borders on either side of the screen;
- 10 • when the device is on, a matrix of colorful square icons with evenly rounded
11 corners within the display screen; and
- 12 • when the device is on, a bottom dock of colorful square icons with evenly rounded
13 corners set off from the other icons on the display, which does not change as other pages of the
14 user interface are viewed.

15 58. The Apple iPhone Trade Dress is embodied in the first generation iPhone product,
16 released in June 2007.

iPhone 3G Trade Dress at Issue

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18 59. The following elements of Apple’s product designs comprise the “Apple iPhone
19 3G Trade Dress” at issue in this case:

- 20 • a rectangular product with four evenly rounded corners;
- 21 • a flat clear surface covering the front of the product;
- 22 • the appearance of a metallic bezel around the flat clear surface;
- 23 • a display screen under the clear surface;
- 24 • under the clear surface, substantial black borders above and below the display
25 screen and narrower black borders on either side of the screen;
- 26 • when the device is on, a row of small dots on the display screen;
- 27 • when the device is on, a matrix of colorful square icons with evenly rounded
28 corners within the display screen; and

1 • when the device is on, a bottom dock of colorful square icons with evenly rounded
2 corners set off from the other icons on the display, which does not change as other pages of the
3 user interface are viewed.

4 60. The Apple iPhone 3G Trade Dress is embodied in the iPhone 3G product, released
5 in July 2008, and the iPhone 3GS product, released in June 2009.

6 **iPhone 4 Trade Dress at Issue**

7 61. The following elements of Apple's product designs comprise the "Apple iPhone 4
8 Trade Dress" at issue in this case:

- 9 • a rectangular product with four evenly rounded corners;
- 10 • a flat clear surface covering the front of the product;
- 11 • a display screen under the clear surface;
- 12 • under the clear surface, substantial neutral (black or white) borders above and
13 below the display screen and narrower black borders on either side of the screen;
- 14 • a thin metallic band around the outside edge of the phone;
- 15 • when the device is on, a row of small dots on the display screen;
- 16 • when the device is on, a matrix of colorful square icons with evenly rounded
17 corners within the display screen; and
- 18 • when the device is on, a bottom dock of colorful square icons with evenly rounded
19 corners set off from the other icons on the display, which does not change as other pages of the
20 user interface are viewed.

21 62. The Apple iPhone 4 Trade Dress is embodied in the iPhone 4 product, released in
22 June 2010.

23 **iPhone/iPhone 3G/iPhone 4 Trade Dress at Issue**

24 63. The following elements of Apple's product designs comprise the "Apple iPhone
25 Trade Dress" at issue in this case:

- 26 • a rectangular product with four evenly rounded corners;
- 27 • a flat clear surface covering the front of the product;
- 28 • a display screen under the clear surface;

- 1 • under the clear surface, substantial neutral (black or white) borders above and
- 2 below the display screen and narrower neutral borders on either side of the screen;
- 3 • when the device is on, a matrix of colorful square icons with evenly rounded
- 4 corners within the display screen; and
- 5 • when the device is on, a bottom dock of colorful square icons with evenly rounded
- 6 corners set off from the other icons on the display, which does not change as other pages of the
- 7 user interface are viewed.

8 64. The Apple iPhone/iPhone 3G/iPhone 4 Trade Dress is embodied in the first
9 generation iPhone product (released in June 2007), the iPhone 3G product (released in July 2008),
10 the iPhone 3GS product (released in June 2009), and the iPhone 4 product (released in June
11 2010).

12 **iPad Trade Dress at Issue**

13 65. The following elements of Apple's product designs comprise the "Apple iPad
14 Trade Dress" at issue in this case:

- 15 • a rectangular product with four evenly rounded corners;
- 16 • a flat clear surface covering the front of the product;
- 17 • the appearance of a metallic rim around the flat clear surface;
- 18 • a display screen under the clear surface;
- 19 • under the clear surface, substantial neutral (black or white) borders on all sides of
- 20 the display screen; and
- 21 • when the device is on, a matrix of colorful square icons with evenly rounded
- 22 corners within the display screen.

23 66. The Apple iPad Trade Dress is embodied in the first generation iPad product,
24 released in January 2010.

25 **iPad 2 Trade Dress at Issue**

26 67. The following elements of Apple's product designs comprise the "Apple iPad 2
27 Trade Dress" at issue in this case:

- 28 • a rectangular product with four evenly rounded corners;

- 1 • a flat clear surface covering the front of the product;
- 2 • the appearance of a metallic rim around the clear flat surface;
- 3 • a display screen under the clear surface;
- 4 • under the clear surface, substantial neutral (black or white) borders on all sides of
- 5 the display screen; and
- 6 • when the device is on, a matrix of colorful square icons with evenly rounded
- 7 corners within the display screen.

8 68. The Apple iPad 2 Trade Dress is embodied in the iPad 2 product, released in

9 March 2011.

10 **Apple's Trademarks**

11 69. Apple has protectable trademark rights in various colorful square icons with

12 evenly rounded corners that have been used in the user interface in the iPhone, iPod touch, and

13 iPad products released to date.

14 70. U.S. Registration No. 3,886,196 covers an icon that is green in color with a white

15 silhouette of a phone handset arranged at a 45 degree angle and centered on the icon that

16 represents the application for making telephone calls:



22 Exhibit 23 is a true and correct copy of U.S. Registration No. 3,866,196.

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1 71. U.S. Registration No. 3,889,642 covers an icon that is green in color with a white
2 silhouette of a speech bubble centered on the icon that represents the application for messaging:



8 Exhibit 24 is a true and correct copy of U.S. Registration No. 3,889,642.

9 72. U.S. Registration No. 3,886,200 covers an icon featuring a yellow and green
10 sunflower against a light-blue background that represents the application for photos:



16 Exhibit 25 is a true and correct copy of U.S. Registration No. 3,866,200.

17 73. U.S. Registration No. 3,889,685 covers an icon that features gears against a gray
18 background that represents the application for settings:



24 Exhibit 26 is a true and correct copy of U.S. Registration No. 3,889,685.

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1 74. U.S. Registration No. 3,886,169 covers an icon that features a yellow notepad that
2 represents the application for notes:



8 Exhibit 27 is a true and correct copy of U.S. Registration No. 3,886,169.

9 75. U.S. Registration No. 3,886,197 is for the silhouette of a man on a spiral bound
10 address book that represents the icon for contacts:



16 Exhibit 28 is a true and correct copy of U.S. Registration No. 3,886,197.

17 76. Collectively, the application icons displayed in Paragraphs 70-75 represent
18 Apple's "Registered Icon Trademarks." Apple has used these Registered Icon Trademarks in
19 connection with its iPhone, iPod touch, and iPad products released to date.

20 77. To represent the iTunes application, Apple uses an icon w a purple background
21 color with a white circle and a silhouette of two white eighth notes within the white circle:



27 Pending U.S. Application Serial No. 85/041,463 covers this icon (the "Purple iTunes Store
28 Trademark"). Exhibit 29 is a true and correct copy of U.S. Application Serial No. 85/041,463.

1 78. Moreover, Apple also owns a federal trademark registration for a two eighth note
2 and CD logo for its iTunes on-line music service, U.S. Registration No. 2,935,038 (the “iTunes
3 Eighth Note and CD Design Trademark”):



9 U.S. Registration No. 2,935,038 issued on March 22, 2005. Apple filed an Affidavit under
10 Section 15 of the Lanham Act on March 24, 2010, rendering the registration incontestable.
11 Exhibit 30 is a true and correct copy of U.S. Registration No. 2,935,038.

12 **SAMSUNG’S INFRINGING PRODUCTS**

13 79. Rather than innovate and develop its own technology and a unique Samsung style
14 for its smart phone and tablet computer products, Samsung has chosen to copy Apple’s
15 technology, user interface, and innovative style in its phone and tablet computer products.

16 80. Apple introduced its first iPhone product at MacWorld in January 2007 and
17 released it for sale in June 2007. This product featured the distinctive and minimalist Apple
18 iPhone Trade Dress. Merely one month after the introduction of the first iPhone product at
19 MacWorld in February 2007, Samsung raised its intent to release its F700 product at the 3GSM
20 World Congress. Samsung released the Samsung F700 in November 2007 — copying the clean
21 flat clear surface of the Apple iPhone Trade Dress and the Apple iPhone/iPhone 3G/iPhone 4
22 Trade Dress.

23 81. In June 2008, Apple introduced its iPhone 3G generation phone with the
24 distinctive Apple iPhone 3G Trade Dress. Apple released the iPhone 3G the following month, in
25 July 2008. And in June 2009, Apple announced and released a newer iPhone 3G version — the
26 iPhone 3GS, also with the distinctive Apple iPhone 3G Trade Dress. In March 2010, Samsung
27 announced its Samsung Galaxy i9000 phone, copying every aspect of the distinctive and
28 minimalist Apple iPhone 3G Trade Dress: a rectangular product with four evenly rounded

1 corners, a flat clear face covering the front of the product, a large display screen under the clear
2 surface, substantial black borders above and below the display screen and narrower black borders
3 on either side of the screen under the clear surface, the appearance of a metallic bezel around the
4 flat clear surface, and on the display when the device is turned on, a row of small dots, a matrix of
5 colorful square icons with evenly rounded corners, and a bottom dock of colorful square icons
6 with evenly rounded corners set off from the other icons. The dock of icons does not change as
7 the other pages of the user interface are viewed.

8 82. In January 2010, Apple introduced its iPad with the distinctive Apple iPad Trade
9 Dress. In November 2010, Samsung copied the distinctive Apple iPad Trade Dress and
10 introduced the Samsung Galaxy Tab tablet computer, which is a rectangular product with four
11 evenly rounded corners, a flat clear face covering the front of the product, a large display screen
12 under the clear surface, substantial black borders on all sides of the display screen under the clear
13 surface, and when the device is turned on, a matrix of colorful square icons with evenly rounded
14 corners within the display screen.

15 83. In June 2010, Apple announced and released the iPhone 4 device with the clean
16 and distinctive Apple iPhone 4 Trade Dress. In February 2011, reporters and bloggers on the
17 Internet published photographs of a Samsung Galaxy S 2 phone that copies the Apple
18 iPhone/iPhone 3G/iPhone 4 Trade Dress, including being a rectangular product with four evenly
19 rounded corners, having a flat clear face covering the front of the product, a large display screen
20 under the clear surface, substantial black borders above and below the display screen and
21 narrower black borders on either side of the screen under the clear surface, and on the display
22 when the device is turned on, a row of small dots, a matrix of colorful icons, and a bottom dock of
23 colorful icons set off from the other icons. The dock of icons does not change as the other pages
24 of the user interface are viewed. The profile of the Samsung Galaxy S 2 is much flatter than the
25 first generation of Samsung Galaxy phones, copying the extremely flat and source-identifying
26 clean profile of the Apple iPhone 4 device and the Apple iPhone 4 Trade Dress. From the front,
27 the Galaxy S 2 also has the appearance of a thin rim similar to the thin rim that is created by the
28 metallic band around the outside edge of the iPhone 4.

1 84. In March 2011, Apple announced and released the iPad 2 tablet computer with the
2 distinctive Apple iPad 2 Trade Dress. On June 8, 2011, Samsung commenced U.S. sales of its
3 Galaxy Tab 10.1 at a “world premiere” event held at Best Buy in New York City. On
4 information and belief, the original Galaxy Tab 10.1 was overhauled to copy the iPad 2 after the
5 iPad 2 tablet was released in March 2011. The Vice President of Samsung’s mobile division, Lee
6 Don-Joo, is quoted: “We will have to improve the parts [of the Galaxy Tab 10.1] that are
7 inadequate. Apple made [the iPad 2] very thin.” The Galaxy Tab 10.1 products that Samsung
8 has sold in the U.S. copy the minimalist and distinctive Apple iPad Trade Dress and Apple iPad 2
9 Trade Dress: a rectangular product with four evenly rounded corners, a flat clear surface
10 covering the front of the product, the appearance of a metallic rim around the flat clear surface, a
11 large display screen under the clear surface, substantial black borders on all sides of the display
12 screen under the clear surface, and when the device is turned on, a matrix of colorful icons within
13 the display screen. The Galaxy Tab 10.1 also features a glossy white minimalist back and a thin
14 side profile that makes it appear just like an iPad when it sits on a table.

15 85. The copying is so pervasive and consistent that the Samsung Galaxy products
16 appear to be actual Apple products — with the same rectangular shape, four evenly rounded
17 corners, a flat clear surface with substantial black borders underneath, and when the devices are
18 turned on, a matrix of colorful icons. When a Samsung Galaxy phone or Galaxy Tab 10.1 is used
19 in public, there can be little doubt that it would be viewed as an Apple product based upon the
20 design alone.

21 86. The copying has been widely observed in the industry and has been mentioned in
22 multiple articles reviewing Samsung products. For example, a writer for *Wired* wrote that
23 Samsung’s “Vibrant’s industrial design is shockingly similar to the iPhone 3G.” Exhibit 31 is a
24 true and correct copy of a July 15, 2010 article on www.wired.com by Priva Ganapati, entitled
25 “First Look: Samsung Vibrant Rips Off iPhone 3G Design.” Another *Wired* writer wrote,
26 “[L]et’s settle one of the biggest arguments surrounding this phone. Yes, the Vibrant closely
27 resembles a certain best-selling smartphone.” Exhibit 32 is a true and correct copy of an
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1 August 16, 2010 article on www.wired.com by Terrence Russell, entitled “Samsung Vibrant
2 Looks Like an iPhone, Has Battery Life to Match.”

3 87. Similar comments have been made about Samsung’s Galaxy Tab 10.1 device. For
4 example, a Business Insider review of Samsung’s Galaxy Tab 10.1 stated that, “[f]rom the front,
5 it looks like an iPad.” Exhibit 33 is a true and correct copy of a February 13, 2011 article on
6 www.businessinsider.com by Dan Frommer, entitled “LIVE FROM BARCELONA: Check Out
7 The New 10-Inch Samsung Galaxy Tab.” A recent CNET reviewer remarked: “Taking another
8 page from the iPad 2’s school of sexy tablet building, the 10.1 has one of the cleanest designs
9 we’ve seen on a tablet. From the front, its 10.1-inch screen is surrounded by a 0.75-inch black
10 bezel and a silver aluminum outline at its edge.” Exhibit 34 is a true and correct copy of a May
11 10, 2011 article on www.reviews.cnet.com by Eric Franklin, entitled “Samsung Galaxy Tab 10.1-
12 inch: The iPad 2 of Honeycomb tablets.”

13 88. Summarizing “Samsung’s Anti-iPad 2 Policy” – “[To] Clone the Heck Out of It,”
14 a Fast Company editor concluded, “Samsung has thrown in the towel on innovative tablet design,
15 and has realized it has to match Apple’s successful design and pricing recipe (to the extent it’s
16 even tweaked its design plans) to capture any meaningful market share.” Exhibit 35 is a
17 March 22, 2011 article on www.fastcompany.com by Kit Keaton.

18 89. Samsung had many options in developing its smart phones and tablet computers.
19 Indeed, earlier versions of Samsung smart phones did not embody the same combination of
20 elements of Apple’s trade dress. Even the icons in earlier versions of the Samsung smart phones
21 looked different because, for example, they did not appear as a matrix of colorful square icons
22 above a bottom “dock” of icons.

23 90. Samsung was apparently not satisfied with copying the design of the Apple
24 products themselves, as it also copied many elements of the unique Apple packaging, including
25 using small rectangular boxes for the phones with minimal graphics other than the prominent
26 image of a phone, and a tray that cradles the phone in the topmost portion of the box so that it is
27 immediately and cleanly presented to the consumer when the box is opened. Samsung even
28 carried these design elements over to its tablet computer packaging.

1 91. Samsung chose to infringe Apple's patent, trade dress, and trademark rights
2 through the design and promotion of its Galaxy mobile phones and tablet computers to trade upon
3 the goodwill that Apple has developed in connection with its Apple family of mobile products.

4 92. Specifically, Samsung has imported into or sold in the United States the following
5 products, each of which infringes Apple's patent, trade dress, and/or trademark rights: the
6 Acclaim, Captivate, Continuum, Droid Charge, Exhibit 4G, Epic 4G, Fascinate, Gem, Galaxy
7 Ace, Galaxy Prevail, Galaxy S (i9000), Galaxy S 4G, Gravity, Indulge, Infuse 4G, Intercept,
8 Mesmerize, Nexus S, Nexus S 4G, Replenish, Showcase i500, Showcase Galaxy S, Sidekick,
9 Transform, and Vibrant phones, and the Galaxy Tab and Galaxy Tab 10.1 tablet computers and
10 similar products. On information and belief, Samsung will soon import or sell in the United
11 States the Galaxy S II (aka Galaxy S 2) phone, which also will infringe Apple's patent, trade
12 dress, and/or trademark rights.

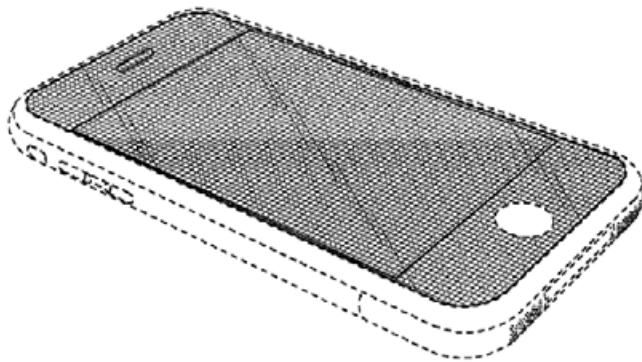
13 **Infringement of Apple's Patents**

14 93. Samsung's infringement of the Apple utility patents identified in this Complaint
15 provides Samsung with unique functionality for its products that is the result of Apple's
16 innovation, not Samsung's. Samsung has not obtained permission from Apple to use its
17 inventions in the identified utility patents.

18 94. Moreover, as the side-by-side comparisons shown below reveal, Samsung has
19 misappropriated Apple's patented product designs in the accused products, including the
20 Samsung Galaxy mobile phone and tablet computer depicted below.
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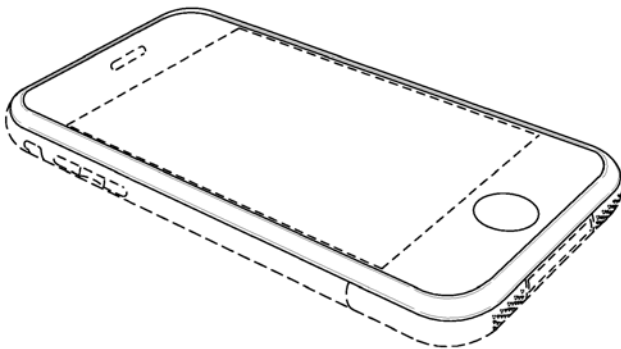
'D677 Patent



Galaxy S 4G



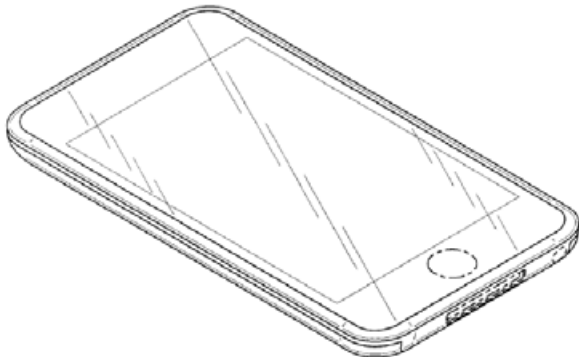
'D087 Patent



Galaxy S 4G



'D270 Patent

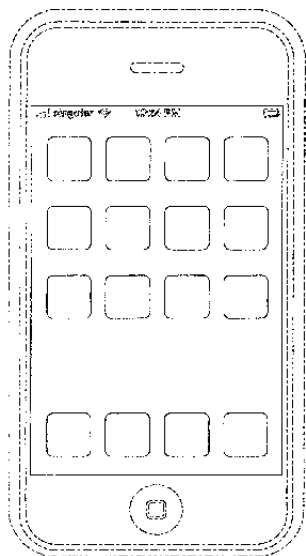


Galaxy S 4G



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'D790 Patent



FIGURE

Galaxy S i9000



'D334 Patent



Galaxy S i9000



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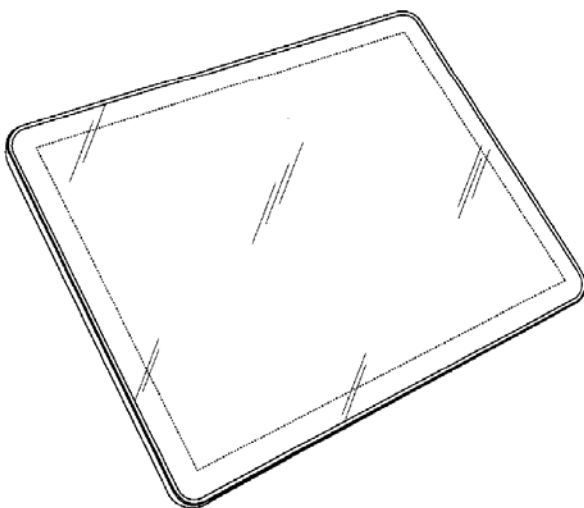
'D305 Patent



Galaxy S i9000



'D889 Patent



Galaxy Tab 10.1



Infringement of Apple's Trade Dress

95. Samsung announced its Galaxy line of Android-based smart phones in March of 2010 in South Korea. The original model, Galaxy S i9000, is shown below side by side with an iPhone 3GS.

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Apple iPhone 3GS



Galaxy S i9000



96. Each of Samsung's Galaxy phones embodies a combination of several elements of the Apple iPhone/iPhone 3G/iPhone 4 Trade Dress. Specifically, several of the Samsung Galaxy phones, including the Vibrant, Fascinate, Galaxy S (i9000), and Galaxy S 4G include the following elements of the Apple iPhone/iPhone 3G/iPhone 4 Trade Dress:

- a rectangular product with four evenly rounded corners;
- a flat clear surface covering the front of the product;
- a display screen under the clear surface;

- 1 • under the clear surface, substantial black borders above and below the display
- 2 screen and narrower black borders on either side of the screen;
- 3 • when the device is on, a matrix of colorful square icons with evenly rounded
- 4 corners within the display screen; and
- 5 • when the device is on, a bottom dock of colorful square icons with evenly rounded
- 6 corners set off from the other icons, which does not change as other pages of the user interface are
- 7 viewed.

8 97. Several of Samsung's Galaxy phones, including the Vibrant, Fascinate, Galaxy S
9 (i9000), and Galaxy S 4G also embody significant elements of the Apple iPhone 3G Trade Dress
10 identified above, including the following:

- 11 • a rectangular product with four evenly rounded corners;
- 12 • a flat clear surface covering the front of the product;
- 13 • the appearance of a metallic bezel around the flat clear surface;
- 14 • a display screen under the clear surface;
- 15 • under the clear surface, substantial black borders above and below the display
- 16 screen and narrower black borders on either side of the screen;
- 17 • when the device is on, a row of small dots on the display screen;
- 18 • when the device is on, a matrix of colorful square icons with rounded corners
- 19 within the display screen; and
- 20 • when the device is on, a bottom dock of colorful square icons with evenly rounded
- 21 corners set off from the other icons on the display, which does not change as other pages of the
- 22 user interface are viewed.

23 98. On information and belief, Samsung will be introducing Galaxy S 2 phones that
24 will embody significant elements of the Apple iPhone 4 Trade Dress, specifically:

- 25 • a rectangular product with four evenly rounded corners;
- 26 • a flat clear surface covering the front of the product;
- 27 • a display screen under the clear surface;
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- 1 • under the clear surface, substantial black borders above and below the display
- 2 screen and narrower black borders on either side of the screen;
- 3 • when the device is on, a row of small dots on the display screen;
- 4 • when the device is on, a matrix of colorful icons within the display screen; and
- 5 • when the device is on, a bottom row dock of colorful icons set off from the other
- 6 icons, which does not change as other pages of the user interface are viewed.

7 99. As shown below, Samsung’s Galaxy Tab computer tablet also closely copies a
 8 combination of several elements of the Apple iPad Trade Dress and the Apple iPad 2 Trade
 9 Dress.



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20 **Samsung Tab**

21 100. Specifically, the Samsung computer tablet has:

- 22 • a rectangular product with four evenly rounded corners;
- 23 • a flat clear surface covering the front of the product;
- 24 • a display screen under the clear surface;
- 25 • under the clear surface, substantial black borders on all sides of the display screen;
- 26 and
- 27 • when the device is on, a matrix of colorful icons within the display screen.

1 101. Samsung's Galaxy Tab 10.1 tablet computer further demonstrates Samsung's
2 relentless copying of the Apple iPad Trade Dress and Apple iPad 2 Trade Dress.



12 **Samsung Galaxy Tab 10.1**

13 102. Specifically, the Samsung Galaxy Tab 10.1 tablet computer incorporates the
14 following hardware elements of the Apple iPad Trade Dress and Apple iPad 2 Trade Dress:

- 15 • a rectangular product with four evenly rounded corners;
16 • a flat clear surface covering the front of the product;
17 • the appearance of a metallic rim around the flat clear surface;
18 • a display screen under the clear surface; and
19 • under the clear surface, substantial black borders on all sides of the display screen.

20 103. The recently released version of the Galaxy Tab 10.1 apparently does not include
21 Samsung's TouchWiz graphical user interface, but media reports have indicated that future
22 versions will include it. To the extent that they do, they may also incorporate the graphical user
23 interface element of the Apple iPad Trade Dress and the Apple iPad 2 Trade Dress, namely, when
24 the device is turned on, a matrix of colorful icons within the display screen.

25 **Infringement of Apple's Trademarks**

26 104. In addition to copying the trade dress identified above, Samsung has also copied
27 numerous application icons in which Apple holds valid trademark rights, as shown below:
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Apple Icons

Samsung Icons



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105. Moreover, the icon that Samsung uses for its music application is virtually identical to the iTunes “Eighth Note and CD” logo that Apple has registered with the United States Patent and Trademark Office:

Apple Icon

Samsung Icon



106. Samsung’s adoption of a trade dress that slavishly copies the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress and its use of various icons that infringe Apple’s trademark rights is likely to cause confusion or mistake, or to deceive consumers, purchasers, and others into thinking that Samsung products are Apple products, or that they are sponsored by or affiliated with Apple, when they are not. The copying is particularly problematic because the Samsung

1 Galaxy products are the type of products that will be used in public — on the bus, in cafes, in
2 stores, or at school, where third parties, who were not present when the products were purchased,
3 will associate them with Apple because they have the unmistakable Apple look that is created
4 from the various elements of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple
5 iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress.

6 107. Of significant concern for Apple is that Apple devotes a tremendous amount of
7 resources — technical research and development *and* design resources — to develop its cutting
8 edge products. Part of the cachet of Apple products is the very fact that they consistently stand
9 out from all of the other products on the market. Apple's goodwill among consumers is closely
10 tied to its position as a pioneer in technology and communications products, which causes each
11 release of a new product to be highly anticipated among consumers who want to be among the
12 early adopters of the newest Apple product. Samsung's flagrant and relentless copying of
13 Apple's intellectual property rights in its Galaxy family of products not only allows Samsung to
14 reap benefits from Apple's investment, it also threatens to dilute the strength of the Apple trade
15 dress and icon trademarks as source identifiers and diminish the very important goodwill that
16 Apple has cultivated with its products.

17 108. On information and belief, Samsung's marketing has played up the similarities
18 between its Galaxy family of phones and the Apple iPhone products. On information and belief,
19 Samsung's mobile phones are marketed as the phone that is the closest to the iPhone — for
20 consumers who want a product with the distinctive Apple look, but who do not want to pay for
21 the real product.

22 109. Apple's efforts to address Samsung's pervasive copying of Apple's innovations
23 and intellectual property directly with Samsung have been unsuccessful. Apple is left with no
24 choice but to file this lawsuit in order to protect one of its most valuable assets — the technology
25 used in and the designs of the iPhone, iPod touch, and the iPad products.

FIRST CLAIM FOR RELIEF

(Federal False Designation of Origin & Unfair Competition)

(15 U.S.C. § 1125(a))

110. Apple incorporates and realleges paragraphs 1 through 109 of this Complaint.

111. Apple is the owner of all right and title to the distinctive Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress, as embodied in the Apple iPhone, iPod touch, and iPad products. The Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress are not merely functional.

112. In addition, based on extensive and consistent advertising, promotion and sales throughout the United States, the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress have acquired distinctiveness and enjoys secondary meaning among consumers, identifying Apple as the source of its products.

113. Apple's extensive promotion of the distinctive Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress has resulted in Apple's acquisition of valuable, legally protected rights in the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress as well as considerable customer goodwill.

114. The Samsung Galaxy line of phone and tablet computer products has misappropriated the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress by mimicking a combination of several elements of those trade dresses.

115. Samsung's manufacture and distribution of the Samsung Galaxy phone and tablet computer products with product design and product user interface features that mimic a combination of several elements of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress, coupled with Samsung's use of a packaging style that copies the unique Apple packaging, is likely to

1 cause confusion, cause mistake, or deceive consumers as to the affiliation, connection, or
2 association of Samsung with Apple, or as to the origin, sponsorship, or approval by Apple of
3 Samsung's goods, services, or commercial activities.

4 116. Samsung's manufacture and distribution of the Samsung Galaxy line of phone and
5 tablet computer products with product design and product user interface features that mimic a
6 combination of several elements of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress,
7 Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress, coupled
8 with Samsung's use of a packaging style that copies the unique Apple packaging, enables
9 Samsung to benefit unfairly from Apple's reputation and success, thereby giving Samsung's
10 infringing products sales and commercial value they would not otherwise have.

11 117. Samsung's actions constitute unfair competition and false designation of origin in
12 violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

13 118. Samsung knew of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress,
14 Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress when it
15 designed its Galaxy line of phone and tablet computer products, and has refused to change its
16 product or packaging design in response to Apple's repeated objections. Accordingly, Samsung's
17 infringement has been and continues to be intentional, willful, and without regard to Apple's
18 rights in the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade
19 Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress.

20 119. Apple is informed and believes, and on that basis alleges, that Samsung has gained
21 profits by virtue of its infringement of the Apple iPhone Trade Dress, Apple iPhone 3G Trade
22 Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress.

23 120. Apple also has sustained damages as a direct and proximate result of Samsung's
24 infringement of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4
25 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress in an amount to be proven at
26 trial.

27 121. Apple has been and will continue to be irreparably harmed and damaged by
28 Samsung's conduct insofar as Apple's invaluable goodwill is being eroded by Samsung's

1 continuing infringement, and Apple lacks an adequate remedy at law to compensate for this harm
2 and damage. Pursuant to 15 U.S.C. § 1116, Apple is entitled to an injunction against Samsung's
3 continuing infringement of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple
4 iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress. Unless enjoined,
5 Samsung will continue its infringing conduct.

6 122. Because Samsung's actions have been willful, Apple is entitled to Samsung's
7 profits, treble Apple's actual damages, an award of costs, and, this being an exceptional case,
8 reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

9 **SECOND CLAIM FOR RELIEF**

10 **(Federal Trade Dress Infringement)**

11 **(15 U.S.C. § 1114)**

12 123. Apple incorporates and realleges paragraphs 1 through 122 of this Complaint.

13 124. Apple owns three registrations for the design and configuration of the iPhone.

14 125. U.S. Registration No. 3,470,983 is for the overall design of the product, including
15 the rectangular shape, the evenly rounded corners, the silver edges, the black face, and the display
16 of sixteen colorful icons.

17 126. U.S. Registration No. 3,457,218 is for the configuration of a rectangular handheld
18 mobile digital electronic device with rounded corners.

19 127. U.S. Registration No. 3,475,327 is for a rectangular handheld mobile digital
20 electronic device with a gray rectangular portion in the center, a black band above and below the
21 gray rectangle and on the curved corners, and a silver outer border and side.

22 128. The Samsung Galaxy line of phone products copies and infringes these three trade
23 dress registrations (collectively, the "Apple Registered Trade Dress").

24 129. Samsung's manufacture and distribution of the Samsung Galaxy line of phone
25 products with product design and product user interface features that copy a combination of
26 several elements of the Apple Registered Trade Dress, coupled with Samsung's use of a
27 packaging style that copies the unique Apple packaging, is likely to cause confusion, cause
28 mistake, or deceive the consumer as to the affiliation, connection, or association of Samsung with

1 Apple, or as to the origin, sponsorship, or approval by Apple of Samsung's goods, services or
2 commercial activities.

3 130. Samsung's manufacture and distribution of the Samsung Galaxy line of phone
4 products with product design and product user interface features that copy a combination of
5 several elements of the Apple Registered Trade Dress, coupled with Samsung's use of a
6 packaging style that copies the unique Apple packaging, enable Samsung to benefit unfairly from
7 Apple's reputation and success, thereby giving Samsung's infringing products sales and
8 commercial value they would not otherwise have.

9 131. Prior to Samsung's first use of the Apple Registered Trade Dress, Samsung was
10 aware of Apple's business and had either actual notice and knowledge, or constructive notice of
11 the Apple Registered Trade Dress, and has refused to change its product or packaging design in
12 response to Apple's repeated objections.

13 132. Samsung's unauthorized use of a trade dress for its Galaxy phone product line that
14 infringes the Apple Registered Trade Dress is likely to deceive or to cause confusion or mistake
15 among consumers as to the origin, sponsorship, or approval of the Samsung Galaxy line of phone
16 products and/or to cause confusion or mistake as to any affiliation, connection, or association
17 between Apple and Samsung, in violation of 15 U.S.C. § 1114(a).

18 133. Apple is informed and believes, and on that basis alleges, that Samsung's
19 infringement of the Apple Registered Trade Dress as described herein has been and continues to
20 be intentional, willful, and without regard to Apple's rights in the Apple Registered Trade Dress.

21 134. Apple is informed and believes, and on that basis alleges, that Samsung has gained
22 profits by virtue of its infringement of the Apple Registered Trade Dress.

23 135. Apple also has sustained damages as a direct and proximate result of Samsung's
24 infringement of the Apple Registered Trade Dress in an amount to be proven at trial.

25 136. Apple will suffer and is suffering irreparable harm from Samsung's infringement
26 of the Apple Registered Trade Dress insofar as Apple's invaluable goodwill is being eroded by
27 Samsung's continuing infringement. Apple has no adequate remedy at law to compensate it for
28 the loss of business reputation, customers, market position, and goodwill and confusion of

1 potential customers flowing from Samsung's infringing activities. Pursuant to 15 U.S.C. § 1116,
2 Apple is entitled to an injunction against Samsung's continuing infringement of the Apple
3 Registered Trade Dress. Unless enjoined, Samsung will continue its infringing conduct.

4 137. Because Samsung's actions have been committed with intent to damage Apple and
5 to confuse and deceive the public, Apple is entitled to Samsung's profits, treble Apple's actual
6 damages, an award of costs, and, this being an exceptional case, reasonable attorneys' fees
7 pursuant to 15 U.S.C. § 1117(a).

8 **THIRD CLAIM FOR RELIEF**
9 **(Federal Trademark Infringement)**

10 **(15 U.S.C. § 1114)**

11 138. Apple incorporates and realleges paragraphs 1 through 137 of this Complaint.

12 139. Apple owns seven federal trademark registrations for the distinctive and colorful
13 application icons used in the user interface for the iPhone, iPod touch, and iPad — the Registered
14 Icon Trademarks.

15 140. The Samsung Galaxy line of phone and tablet computer products has infringed the
16 Registered Icon Trademarks by using variations of those application icons in Samsung's products.
17 The Samsung Galaxy line of phone and computer tablet products also has infringed Apple's
18 registered iTunes Eighth Note and CD Logo.

19 141. Samsung's use of infringing application icons is likely to cause confusion, cause
20 mistake, or deceive the consumer as to the affiliation, connection, or association of Samsung with
21 Apple, or as to the origin, sponsorship, or approval by Apple of Samsung's goods, services or
22 commercial activities.

23 142. Samsung's use of infringing application icons enables Samsung to benefit unfairly
24 from Apple's reputation and success, thereby giving Samsung's infringing products sales and
25 commercial value they would not otherwise have.

26 143. Prior to Samsung's first use of its infringing application icons, Samsung was
27 aware of Apple's business and had either actual notice and knowledge, or constructive notice of,
28 Apple's Registered Icon Trademarks.

1 151. Apple is the owner of all right and title to the distinctive Apple iPhone Trade
2 Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and
3 Apple iPad 2 Trade Dress, as embodied in the Apple iPhone, iPod touch, and iPad products. The
4 Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple
5 iPad Trade Dress, and Apple iPad 2 Trade Dress has acquired secondary meaning and is not
6 merely functional.

7 152. Based on extensive and consistent advertising, promotion, and sales throughout the
8 United States, the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4
9 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress is famous. It serves to
10 identify Apple as the source of Apple's products.

11 153. The Samsung Galaxy line of phone and tablet computer products has
12 misappropriated the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4
13 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress by mimicking a combination
14 of several elements of that trade dress.

15 154. Samsung's manufacture and distribution of the Samsung Galaxy phone and tablet
16 computer products with product design and product user interface features that mimic a
17 combination of several elements of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress,
18 Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress, coupled
19 with Samsung's use of a packaging style that copies the unique Apple packaging, is likely to
20 cause dilution by blurring of the famous Apple iPhone Trade Dress, Apple iPhone 3G Trade
21 Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress.

22 155. Samsung's actions constitute dilution in violation of Section 43(c) of the Lanham
23 Act, 15 U.S.C. § 1125(c).

24 156. Samsung knew of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress,
25 Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress when it
26 designed its Galaxy line of phone and tablet computer products, and has refused to change its
27 product or packaging design in response to Apple's repeated objections. Accordingly, Samsung's
28 dilution has been and continues to be intentional, willful, and without regard to Apple's rights in

1 the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress,
2 Apple iPad Trade Dress, and Apple iPad 2 Trade Dress.

3 157. Apple is informed and believes, and on that basis alleges, that Samsung has gained
4 profits by virtue of its dilution of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress,
5 Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress.

6 158. Apple also has sustained damages as a direct and proximate result of Samsung's
7 dilution of the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade
8 Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress in an amount to be proven at trial.

9 159. Apple will suffer and is suffering irreparable harm from Samsung's dilution of the
10 Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple
11 iPad Trade Dress, and Apple iPad 2 Trade Dress insofar as Apple's invaluable trade dress, and
12 goodwill is being eroded by Samsung's continuing sales of Samsung Galaxy products that mimic
13 the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress,
14 Apple iPad Trade Dress, and Apple iPad 2 Trade Dress. Apple has no adequate remedy at law to
15 compensate it for the loss of business reputation, customers, market position, and goodwill and
16 confusion of potential customers flowing from Samsung's infringing activities. Pursuant to 15
17 U.S.C. § 1116, Apple is entitled to an injunction against Samsung's continuing dilution of the
18 Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple
19 iPad Trade Dress, and Apple iPad 2 Trade Dress. Unless enjoined, Samsung will continue its
20 illegal conduct.

21 160. Because Samsung's actions have been willful, Apple is entitled to Samsung's
22 profits, treble Apple's actual damages, an award of costs, and, this being an exceptional case,
23 reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

24 **FIFTH CLAIM FOR RELIEF**

25 **(Common Law Trademark Infringement)**

26 161. Apple incorporates and realleges paragraphs 1 through 160 of this Complaint.

27 162. Apple has prior rights in Apple's Registered Icon Trademarks and the Purple
28 iTunes Store Trademark.

1 163. The Samsung Galaxy line of phone and tablet computer products has infringed
2 Apple's Registered Icon Trademarks and the Purple iTunes Store Trademark by using identical or
3 similar application icons in Samsung's products.

4 164. Samsung's use of infringing application icons is likely to cause confusion, cause
5 mistake, or deceive the consumer as to the affiliation, connection, or association of Samsung with
6 Apple, or as to the origin, sponsorship, or approval by Apple of Samsung's goods, services or
7 commercial activities.

8 165. Samsung's use of infringing application icons enables Samsung to benefit unfairly
9 from Apple's reputation and success, thereby giving Samsung's infringing phone and tablet
10 computer products sales and commercial value they would not otherwise have.

11 166. Prior to Samsung's first use of the infringing application icons, Samsung was
12 aware of Apple's business and had either actual notice and knowledge, or constructive notice of
13 Apple's Registered Icon Trademarks and the Purple iTunes Store Trademark.

14 167. Samsung's unauthorized use of the infringing application icons is likely to deceive
15 or to cause confusion or mistake among consumers as to the origin, sponsorship, or approval of
16 the Samsung Galaxy line of phone and tablet computer products and/or to cause confusion or
17 mistake as to any affiliation, connection, or association between Apple and Samsung, in violation
18 of Apple's common law trademark rights.

19 168. Apple is informed and believes, and on that basis alleges, that Samsung's
20 infringement of Apple's Registered Icon Trademarks and the Purple iTunes Store Trademark as
21 described herein has been and continues to be intentional, willful, and without regard to Apple's
22 rights in its Registered Icon Trademarks and the Purple iTunes Store Trademark.

23 169. Apple is informed and believes, and on that basis alleges, that Samsung has gained
24 profits by virtue of its infringement of Apple's Registered Icon Trademarks and the Purple iTunes
25 Store Trademark.

26 170. Apple also has sustained damages as a direct and proximate result of Samsung's
27 infringement of Apple's Registered Icon Trademarks and the Purple iTunes Store Trademark.
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1 171. Apple will suffer and is suffering irreparable harm from Samsung's infringement
2 of Apple's Registered Icon Trademarks and the Purple iTunes Store Trademark insofar as
3 Apple's invaluable goodwill is being eroded by Samsung's continuing infringement. Apple has
4 no adequate remedy at law to compensate it for the loss of business reputation, customers, market
5 position, and goodwill and confusion of potential customers flowing from Samsung's infringing
6 activities. Apple is entitled to an injunction against Samsung's continuing infringement of
7 Apple's Registered Icon Trademarks and the Purple iTunes Store Trademark. Unless enjoined,
8 Samsung will continue its infringing conduct.

9 **SIXTH CLAIM FOR RELIEF**

10 **(Unfair Business Practices – California Business and Professions Code § 17200, *et seq.*)**

11 172. Apple incorporates and realleges paragraphs 1 through 171 of this Complaint.

12 173. The acts of Samsung described above constitute fraudulent and unlawful business
13 practices as defined by California Business & Professions Code § 17200, *et seq.*

14 174. Apple has valid and protectable prior rights in the Apple iPhone Trade Dress,
15 Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple
16 iPad 2 Trade Dress, the Registered Trade Dress, the iTunes Eighth Note and CD Design
17 Trademark, the Purple iTunes Store Trademark, and the Registered Icon Trademarks. The Apple
18 iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad
19 Trade Dress, Apple iPad 2 Trade Dress, and the Registered Trade Dress do not serve any function
20 other than to identify Apple as the source of its mobile products. The Apple iPhone Trade Dress,
21 Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, Apple iPad
22 2 Trade Dress, and the Registered Trade Dress are inherently distinctive, and, through Apple's
23 long use, have come to be associated solely with Apple as the source of the products on which
24 they are used.

25 175. Samsung's use of its infringing trade dress is likely to cause confusion as to the
26 source of Samsung's Galaxy line of phone and tablet computer products and is likely to cause
27 others to be confused or mistaken into believing that there is a relationship between Samsung and
28 Apple or that Samsung's products are affiliated with or sponsored by Apple.

1 176. The above-described acts and practices by Samsung are likely to mislead or
2 deceive the general public and therefore constitute fraudulent business practices in violation of
3 California Business & Professions Code § 17200, *et seq.*

4 177. The above-described acts constitute unfair competition under Section 43(a) of the
5 Lanham Act, 15 U.S.C. § 1125(a), trade dress dilution in violation of Section 43(c) of the Lanham
6 Act, 15 U.S.C. § 1125(c), trademark and trade dress infringement under Section 32 of the
7 Lanham Act, 15 U.S.C. § 1114, and patent infringement under 35 U.S.C. § 271, and are therefore
8 unlawful acts in violation of California Business & Professions Code § 17200, *et seq.*

9 178. Samsung acted willfully and intentionally in designing its infringing trade dress
10 and application icons, with full knowledge of Samsung's prior rights in the distinctive Apple
11 iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad
12 Trade Dress, Apple iPad 2 Trade Dress, Registered Trade Dress, iTunes Eighth Note and CD
13 Design Trademark, Purple iTunes Store Trademark, and Registered Icon Trademarks and with an
14 intent to cause confusion or mistake or to deceive customers into believing that there is an
15 affiliation between Samsung and Apple or between Samsung's phone and tablet computer
16 products and Apple's products.

17 179. The unlawful and fraudulent business practices of Samsung described above
18 present a continuing threat to, and is meant to deceive members of, the public in that Samsung
19 continues to promote its products by wrongfully trading on the goodwill of the Apple iPhone
20 Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade
21 Dress, Apple iPad 2 Trade Dress, Registered Trade Dress, iTunes Eighth Note and CD Design
22 Trademark, Purple iTunes Store Trademark, and Registered Icon Trademarks.

23 180. As a direct and proximate result of these acts, Samsung has received, and will
24 continue to profit from, the strength of the Apple iPhone Trade Dress, Apple iPhone 3G Trade
25 Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, Apple iPad 2 Trade Dress,
26 Registered Trade Dress, iTunes Eighth Note and CD Design Trademark, Purple iTunes Store
27 Trademark, and Registered Icon Trademarks.

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1 181. As a direct and proximate result of Samsung's wrongful conduct, Apple has been
2 injured in fact and has lost money and profits, and such harm will continue unless Samsung's acts
3 are enjoined by the Court. Apple has no adequate remedy at law for Samsung's continuing
4 violation of Apple's rights.

5 182. Samsung should be required to restore to Apple any and all profits earned as a
6 result of its unlawful and fraudulent actions, or provide Apple with any other restitutionary relief
7 as the Court deems appropriate.

8 **SEVENTH CLAIM FOR RELIEF**

9 **(Unjust Enrichment)**

10 183. Apple incorporates and realleges paragraphs 1 through 182 of this Complaint.

11 184. As a result of the conduct alleged herein, Samsung has been unjustly enriched to
12 Apple's detriment. Apple seeks a worldwide accounting and disgorgement of all ill-gotten gains
13 and profits resulting from Samsung's inequitable activities.

14 **EIGHTH CLAIM FOR RELIEF**

15 **(Infringement of the '002 Patent)**

16 185. Apple incorporates and realleges paragraphs 1 through 184 of this Complaint.

17 186. Samsung has infringed and continues to infringe one or more claims of the '002
18 Patent by using, selling and/or offering to sell, in the United States and/or importing into the
19 United States, one or more of the Samsung products identified in this Complaint. Samsung's
20 infringing activities violate 35 U.S.C. § 271.

21 187. Apple is informed and believes, and on that basis alleges, that Samsung's
22 infringement of the '002 Patent has been and continues to be intentional, willful, and without
23 regard to Apple's rights.

24 188. Apple is informed and believes, and on that basis alleges, that Samsung has gained
25 profits by virtue of its infringement of the '002 Patent.

26 189. Apple has sustained damages as a direct and proximate result of Samsung's
27 infringement of the '002 Patent.

1 United States, one or more of the Samsung products identified in this Complaint. Samsung's
2 infringing activities violate 35 U.S.C. § 271.

3 199. Apple is informed and believes, and on that basis alleges, that Samsung's
4 infringement of the '607 Patent has been and continues to be intentional, willful, and without
5 regard to Apple's rights.

6 200. Apple is informed and believes, and on that basis alleges, that Samsung has gained
7 profits by virtue of its infringement of the '607 Patent.

8 201. Apple has sustained damages as a direct and proximate result of Samsung's
9 infringement of the '607 Patent.

10 202. Apple will suffer and is suffering irreparable harm from Samsung's infringement
11 of the '607 Patent. Apple has no adequate remedy at law and is entitled to an injunction against
12 Samsung's continuing infringement of the '607 Patent. Unless enjoined, Samsung will continue
13 its infringing conduct.

14 **ELEVENTH CLAIM FOR RELIEF**

15 **(Infringement of the '828 Patent)**

16 203. Apple incorporates and realleges paragraphs 1 through 202 of this Complaint.

17 204. Samsung has infringed and continues to infringe one or more claims of the '828
18 Patent by using, selling and/or offering to sell, in the United States and/or importing into the
19 United States, one or more of the Samsung products identified in this Complaint. Samsung's
20 infringing activities violate 35 U.S.C. § 271.

21 205. Apple is informed and believes, and on that basis alleges, that Samsung's
22 infringement of the '828 Patent has been and continues to be intentional, willful, and without
23 regard to Apple's rights.

24 206. Apple is informed and believes, and on that basis alleges, that Samsung has gained
25 profits by virtue of its infringement of the '828 Patent.

26 207. Apple has sustained damages as a direct and proximate result of Samsung's
27 infringement of the '828 Patent.

1 United States, one or more of the Samsung products identified in this Complaint. Samsung's
2 infringing activities violate 35 U.S.C. § 271.

3 217. Apple is informed and believes, and on that basis alleges, that Samsung's
4 infringement of the '891 Patent has been and continues to be intentional, willful, and without
5 regard to Apple's rights.

6 218. Apple is informed and believes, and on that basis alleges, that Samsung has gained
7 profits by virtue of its infringement of the '891 Patent.

8 219. Apple has sustained damages as a direct and proximate result of Samsung's
9 infringement of the '891 Patent.

10 220. Apple will suffer and is suffering irreparable harm from Samsung's infringement
11 of the '891 Patent. Apple has no adequate remedy at law and is entitled to an injunction against
12 Samsung's continuing infringement of the '891 Patent. Unless enjoined, Samsung will continue
13 its infringing conduct.

14 **FOURTEENTH CLAIM FOR RELIEF**

15 **(Infringement of the '163 Patent)**

16 221. Apple incorporates and realleges paragraphs 1 through 220 of this Complaint.

17 222. Samsung has infringed and continues to infringe one or more claims of the '163
18 Patent by using, selling and/or offering to sell, in the United States and/or importing into the
19 United States, one or more of the Samsung products identified in this Complaint. Samsung's
20 infringing activities violate 35 U.S.C. § 271.

21 223. Apple is informed and believes, and on that basis alleges, that Samsung's
22 infringement of the '163 Patent has been and continues to be intentional, willful, and without
23 regard to Apple's rights.

24 224. Apple is informed and believes, and on that basis alleges, that Samsung has gained
25 profits by virtue of its infringement of the '163 Patent.

26 225. Apple has sustained damages as a direct and proximate result of Samsung's
27 infringement of the '163 Patent.

1 the Samsung products identified in this Complaint, which embody the design covered by the
2 'D790 Patent.

3 235. Apple is informed and believes, and on that basis alleges, that Samsung's
4 infringement of the 'D790 Patent has been and continues to be intentional, willful, and without
5 regard to Apple's rights.

6 236. Apple is informed and believes, and on that basis alleges, that Samsung has gained
7 profits by virtue of its infringement of the 'D790 Patent.

8 237. Apple has sustained damages as a direct and proximate result of Samsung's
9 infringement of the 'D790 Patent.

10 238. Apple will suffer and is suffering irreparable harm from Samsung's infringement
11 of the 'D790 Patent. Apple has no adequate remedy at law and is entitled to an injunction against
12 Samsung's continuing infringement of the 'D790 Patent. Unless enjoined, Samsung will continue
13 its infringing conduct.

14 **SEVENTEENTH CLAIM FOR RELIEF**

15 **(Infringement of the 'D334 Patent)**

16 239. Apple incorporates and realleges paragraphs 1 through 238 of this Complaint.

17 240. Samsung has infringed and continues to infringe the 'D334 Patent by using, selling
18 and/or offering to sell in the United States, and/or importing into the United States one or more of
19 the Samsung products identified in this Complaint, which embody the design covered by the
20 'D334 Patent.

21 241. Apple is informed and believes, and on that basis alleges, that Samsung's
22 infringement of the 'D334 Patent has been and continues to be intentional, willful, and without
23 regard to Apple's rights.

24 242. Apple is informed and believes, and on that basis alleges, that Samsung has gained
25 profits by virtue of its infringement of the 'D334 Patent.

26 243. Apple has sustained damages as a direct and proximate result of Samsung's
27 infringement of the 'D334 Patent.

1 the Samsung products identified in this Complaint, which embody the design covered by the
2 'D677 Patent.

3 253. Apple is informed and believes, and on that basis alleges, that Samsung's
4 infringement of the 'D677 Patent has been and continues to be intentional, willful, and without
5 regard to Apple's rights.

6 254. Apple is informed and believes, and on that basis alleges, that Samsung has gained
7 profits by virtue of its infringement of the 'D677 Patent.

8 255. Apple has sustained damages as a direct and proximate result of Samsung's
9 infringement of the 'D667 Patent.

10 256. Apple will suffer and is suffering irreparable harm from Samsung's infringement
11 of the 'D667 Patent. Apple has no adequate remedy at law and is entitled to an injunction against
12 Samsung's continuing infringement of the 'D667 Patent. Unless enjoined, Samsung will continue
13 its infringing conduct.

14 **TWENTIETH CLAIM FOR RELIEF**

15 **(Infringement of the 'D889 Patent)**

16 257. Apple incorporates and realleges paragraphs 1 through 256 of this Complaint.

17 258. Samsung has infringed and continues to infringe the 'D889 Patent by using, selling
18 and/or offering to sell in the United States, and/or importing into the United States one or more of
19 the Samsung products identified in this Complaint, which embody the design covered by the
20 'D889 Patent.

21 259. Apple is informed and believes, and on that basis alleges, that Samsung's
22 infringement of the 'D889 Patent has been and continues to be intentional, willful, and without
23 regard to Apple's rights.

24 260. Apple is informed and believes, and on that basis alleges, that Samsung has gained
25 profits by virtue of its infringement of the 'D889 Patent.

26 261. Apple has sustained damages as a direct and proximate result of Samsung's
27 infringement of the 'D889 Patent.

1 the Samsung products identified in this Complaint, which embody the design covered by the
2 'D270 Patent.

3 271. Apple is informed and believes, and on that basis alleges, that Samsung's
4 infringement of the 'D270 Patent has been and continues to be intentional, willful, and without
5 regard to Apple's rights.

6 272. Apple is informed and believes, and on that basis alleges, that Samsung has gained
7 profits by virtue of its infringement of the 'D270 Patent.

8 273. Apple has sustained damages as a direct and proximate result of Samsung's
9 infringement of the 'D270 Patent.

10 274. Apple will suffer and is suffering irreparable harm from Samsung's infringement
11 of the 'D270 Patent. Apple has no adequate remedy at law and is entitled to an injunction against
12 Samsung's continuing infringement of the 'D270 Patent. Unless enjoined, Samsung will continue
13 its infringing conduct.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Apple prays for relief, as follows:

16 1. A judgment that Samsung has infringed one of more claims of each of Apple's
17 asserted patents;

18 2. An order and judgment preliminarily and permanently enjoining Samsung and its
19 officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in
20 privity or in concert with them, and their parents, subsidiaries, divisions, successors and assigns
21 from further acts of infringement of Apple's asserted patents;

22 3. A judgment awarding Apple all damages adequate to compensate for Samsung's
23 infringement of Apple's asserted patents, and in no event less than a reasonable royalty for
24 Samsung's acts of infringement, including all pre-judgment and post-judgment interest at the
25 maximum rate permitted by law;

26 4. A judgment awarding Apple all damages, including treble damages, based on any
27 infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest
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1 5. A judgment awarding Apple all of Samsung's profits, pursuant to 35 U.S.C. § 289
2 together with prejudgment interest.

3 6. An order preliminarily and permanently enjoining Samsung and its officers,
4 directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or in
5 concert with them, and their parents, subsidiaries, divisions, successors and assigns, from directly
6 or indirectly infringing or diluting the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress,
7 Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, Apple iPad 2 Trade Dress, Registered Icon
8 Trademarks, Purple iTunes Store Trademark, and iTunes Eighth Note and CD Design Trademark,
9 or using any other product or packaging design or designations similar to or likely to cause
10 confusion with or to dilute the Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple
11 iPhone 4 Trade Dress, Apple iPad Trade Dress, Apple iPad 2 Trade Dress, Registered Icon
12 Trademarks, Purple iTunes Store Trademark, and iTunes Eighth Note and CD Design Trademark;
13 from passing off Samsung's products as being associated with and or sponsored or affiliated with
14 Apple; from committing any other unfair business practices directed toward obtaining for
15 themselves the business and customers of Apple; and from committing any other unfair business
16 practices directed toward devaluing or diminishing the brand or business of Apple.

17 7. Actual damages suffered by Apple as a result of Samsung's unlawful conduct, in
18 an amount to be proven at trial, as well as prejudgment interest as authorized by law;

19 8. Reasonable funds for future corrective advertising;

20 9. An accounting of Samsung's profits pursuant to 15 U.S.C. § 1117;

21 10. A judgment trebling any damages award pursuant to 15 U.S.C. § 1117;

22 11. Punitive damages pursuant to California Civil Code § 3294;

23 12. Restitutionary relief against Samsung and in favor of Apple, including
24 disgorgement of wrongfully obtained profits and any other appropriate relief;

25 13. Costs of suit and reasonable attorneys' fees; and

26 14. Any other remedy to which Apple may be entitled, including all remedies provided
27 for in 15 U.S.C. §§ 1116, 1117, 35 U.S.C. §§ 284, 285, and 289, and Cal. Bus. & Prof. Code §
28 17200, *et seq.*, and under any other law.

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Dated: June 16, 2011

MORRISON & FOERSTER LLP

By: /s/ Michael A. Jacobs
Michael A. Jacobs

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APPLE INC.

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Samsung Electronics America, Inc., and Samsung
14 Telecommunications America, LLC

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

17 APPLE INC., a California corporation,
18 Plaintiff,

19 vs.

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

24 Defendants.
25

CASE NO. 11-cv-01846-LHK

**SAMSUNG ENTITIES' ANSWER,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS TO APPLE INC.'S
AMENDED COMPLAINT; AND
DEMAND FOR JURY TRIAL**

1 **I. ANSWER**

2 Defendants Samsung Electronics Co., Ltd. (“SEC”), Samsung Electronics America, Inc.
3 (“SEA”), and Samsung Telecommunications America, LLC (“STA”) (collectively, the “Samsung
4 Defendants”) by and through their undersigned counsel, in response to the Amended Complaint of
5 Apple Inc. (“Apple”) deny Apple’s allegations of copying, causing confusion, and all other forms
6 of infringement, dilution, unjust enrichment, and unfair competition and answers Apple’s
7 Amended Complaint (“Complaint”) as follows:

8 **THE NATURE OF THE ACTION**

9 1. The Samsung Defendants deny knowledge or information sufficient to form a
10 belief as to the truth or falsity of the allegations in paragraph 1 of the Complaint and therefore
11 deny them.

12 2. The Samsung Defendants deny knowledge or information sufficient to form a
13 belief as to the truth or falsity of the allegations in paragraph 2 of the Complaint and therefore
14 deny them.

15 3. The Samsung Defendants deny knowledge or information sufficient to form a
16 belief as to the truth or falsity of the allegations in paragraph 3 of the Complaint and therefore
17 deny them.

18 4. The Samsung Defendants admit that more than a year ago the first U.S. Galaxy
19 phones were announced and that its Galaxy phones and tablets run on Google’s Android operating
20 platform. The Samsung Defendants also admit that Apple attached to its Complaint some utility
21 and design patents and some trademark registrations that appear to be issued by the United States
22 Patent and Trademark Office. The Samsung Defendants deny knowledge or information
23 sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of the
24 Complaint regarding Apple’s other competitors, and therefore deny them. The Samsung
25 Defendants deny the remaining allegations of paragraph 4 of the Complaint.

26 5. The Samsung Defendants deny that they have engaged in any illegal conduct
27 alleged in the Complaint. The Samsung Defendants admit that through this action, Apple is
28 attempting to stop the Samsung Defendants from competing with it and to obtain money from

1 them. The Samsung Defendants deny knowledge or information sufficient to form a belief as to
2 the truth or falsity of the remaining allegations of paragraph 5 of the Complaint, and therefore
3 deny them.

4 **THE PARTIES**

5 6. The Samsung Defendants deny knowledge or information sufficient to form a
6 belief as to the truth or falsity of the allegations of paragraph 6 of the Complaint, and therefore
7 deny them.

8 7. The Samsung Defendants deny that SEC's principal offices are at the location
9 specified in paragraph 7 of the Complaint. The Samsung Defendants admit that SEC is South
10 Korea's largest company and one of Asia's largest electronics companies. The Samsung
11 Defendants admit that SEC designs, manufactures and provides to the U.S. and world markets a
12 wide range of products, including consumer electronics, computer components, and mobile and
13 entertainment products.

14 8. The Samsung Defendants admit that SEA is a New York corporation, was formed
15 in 1978, and is a subsidiary of SEC. The Samsung Defendants admit that SEA's principal offices
16 are located at 85 Challenger Road, Ridgefield Park, NJ, 07660. The Samsung Defendants admit
17 that SEA offers a full range of award-winning consumer electronics and IT products including, but
18 not limited to, televisions, Blu-ray disc players, digital cameras and camcorders, certain memory
19 storage devices, portable audio devices, printers and monitors. The Samsung Defendants admit
20 that Samsung Telecommunications America, LLC ("STA"), Samsung Electronics Canada, and
21 Samsung Electronics Mexico S.A. de C.V. are affiliates of SEA. The Samsung Defendants deny
22 the remaining allegations of paragraph 8 of the Complaint.

23 9. The Samsung Defendants admit that STA was formed in 1996 and is a subsidiary
24 of SEC. The Samsung Defendants admit that STA researches, develops, markets, sells and offers
25 for sale a variety of personal and business communications products throughout North America,
26 including handheld wireless phones, wireless communications infrastructure systems, fiber optics
27 and enterprise communication systems. The Samsung Defendants deny that the address listed for
28 STA in paragraph 9 of the Complaint is correct.

JURISDICTION

1
2 10. The Samsung Defendants admit that the Complaint purports to allege claims over
3 which this Court has subject matter jurisdiction under 15 U.S.C. § 1121, 28 U.S.C. § 1331, 28
4 U.S.C. § 1338(a), 28 U.S.C. § 1338(b), and 28 U.S.C. § 1367. Except as expressly admitted, the
5 Samsung Defendants deny the remaining allegations of paragraph 10 of the Complaint.

6 11. The Samsung Defendants will not challenge personal jurisdiction over them by this
7 Court for purposes of this action. Except as expressly admitted, the Samsung Defendants deny
8 the remaining allegations of paragraph 11 of the Complaint.

VENUE AND INTRADISTRICT ASSIGNMENT

9
10 12. The Samsung Defendants will not contest the propriety of venue or intradistrict
11 assignment. The Samsung Defendants admit that pursuant to Civil L.R. 3-2(c), Intellectual
12 Property Actions are assigned on a district-wide basis and admits, on information and belief, that
13 Apple’s principal place of business is within this District. Except as expressly admitted, the
14 Samsung Defendants deny the remaining allegations of paragraph 12 of the Complaint.

BACKGROUND

15
16 13. The Samsung Defendants deny knowledge or information sufficient to form a
17 belief as to the truth or falsity of the allegations in paragraph 13 of the Complaint and therefore
18 deny them.

19 14. The Samsung Defendants deny knowledge or information sufficient to form a
20 belief as to the truth or falsity of the allegations in paragraph 14 of the Complaint and therefore
21 deny them.

22 15. The Samsung Defendants deny knowledge or information sufficient to form a
23 belief as to the truth or falsity of the remaining allegations in paragraph 15 of the Complaint and
24 therefore deny them.

25 16. The Samsung Defendants deny knowledge or information sufficient to form a
26 belief as to the truth or falsity of the allegations in paragraph 16 of the Complaint and therefore
27 deny them.

28

1 17. The Samsung Defendants deny knowledge or information sufficient to form a
2 belief as to the truth or falsity of the allegations in paragraph 17 of the Complaint and therefore
3 deny them.

4 18. The Samsung Defendants deny knowledge or information sufficient to form a
5 belief as to the truth or falsity of the allegations in paragraph 18 of the Complaint and therefore
6 deny them.

7 19. The Samsung Defendants deny knowledge or information sufficient to form a
8 belief as to the truth or falsity of the allegations in paragraph 19 of the Complaint and therefore
9 deny them.

10 20. The Samsung Defendants deny knowledge or information sufficient to form a
11 belief as to the truth or falsity of the allegations in paragraph 20 of the Complaint and therefore
12 deny them.

13 21. The Samsung Defendants deny knowledge or information sufficient to form a
14 belief as to the truth or falsity of the allegations in paragraph 21 of the Complaint and therefore
15 deny them.

16 22. The Samsung Defendants deny knowledge or information sufficient to form a
17 belief as to the truth or falsity of the allegations in paragraph 22 of the Complaint and therefore
18 deny them.

19 23. The Samsung Defendants deny knowledge or information sufficient to form a
20 belief as to the truth or falsity of the allegations in paragraph 23 of the Complaint and therefore
21 deny them.

22 24. The Samsung Defendants deny knowledge or information sufficient to form a
23 belief as to the truth or falsity of the allegations in paragraph 24 of the Complaint and therefore
24 deny them.

25 25. The Samsung Defendants deny knowledge or information sufficient to form a
26 belief as to the truth or falsity of the allegations in paragraph 25 of the Complaint and therefore
27 deny them.

28

1 **Apple's Alleged Utility Patents**

2 26. The Samsung Defendants admit that Apple has been issued some utility patents.
3 The Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth
4 or falsity of the remaining allegations in paragraph 26 of the Complaint and therefore deny them.

5 27. The Samsung Defendants admit that Apple has been issued some utility patents.
6 The Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth
7 or falsity of the remaining allegations in paragraph 27 of the Complaint and therefore deny them.

8 28. The Samsung Defendants admit that Apple purports to have attached as Exhibits 1-
9 8 to its Complaint U.S. Patent Nos. 7,812,828 (“828 Patent”), 6,493,002 (“002 Patent”),
10 7,469,381 (“381 Patent”), 7,844,915 (“915 Patent”), 7,853,891 (“891 Patent”), 7,663,607 (“607
11 Patent”), 7,864,163 (“163 Patent”), and 7,920,129 (“129 Patent”). The Samsung Defendants
12 deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
13 allegations in paragraph 28 of the Complaint and therefore deny them.

14 **Apple's Alleged Design Patents**

15 29. The Samsung Defendants admit that Apple purports to have attached to its
16 Complaint U.S. Design Patent Nos. D627,790 (“D790 Patent”), D617,334 (“D334 Patent”),
17 D604,305 (“D305 Patent”), D593,087 (“D087 Patent”), D618,677 (“D677 Patent”), D622,270
18 (“D270 Patent”), and D504,889 (“D889 Patent”). The Samsung Defendants deny knowledge or
19 information sufficient to form a belief as to the truth or falsity of the remaining allegations in
20 paragraph 29 of the Complaint and therefore deny them.

21 **Apple's Alleged Trade Dress**

22 30. Denied on the grounds that the allegations of Paragraph 30 state a legal conclusion
23 to which no response is necessary.

24 31. The Samsung Defendants deny knowledge or information sufficient to form a
25 belief as to the truth or falsity of the allegations in paragraph 31 of the Complaint, particularly
26 given the vagueness of the reference to “[t]he iPhone design,” and therefore deny them.

27 32. The Samsung Defendants admit that no iPhone has included a physical keyboard.
28 The Samsung Defendants aver that the appearance of “the iPhone,” whichever version is being

1 referred to, speaks for itself and deny the allegations of paragraph 32 to the extent they do not
2 accurately describe that appearance. The Samsung Defendants deny that the shape and
3 appearance described in paragraph 32 of the Complaint is distinctive. The Samsung Defendants
4 deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
5 allegations in paragraph 32 of the Complaint and therefore deny them.

6 33. The Samsung Defendants deny the implication that the legal test for functionality
7 requires that “the overall product design is [] required to achieve any particular function” or that
8 “competitors [not] have numerous options from which they can choose for their own product
9 designs” and deny the remaining allegations of paragraph 33.

10 34. The Samsung Defendants deny that “the iPhone product design” described in the
11 Complaint immediately became closely associated with Apple. The Samsung Defendants deny
12 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
13 allegations in paragraph 34 of the Complaint and therefore deny them.

14 35. The Samsung Defendants deny that the “iPhone 3G product design” immediately
15 became closely associated with Apple. The Samsung Defendants deny knowledge or
16 information sufficient to form a belief as to the truth or falsity of the remaining allegations in
17 paragraph 35 of the Complaint and therefore deny them.

18 36. The Samsung Defendants deny the implication that the legal test for functionality
19 requires that “the overall product design is [] dictated by function” or that “competitors [not] have
20 many alternative product designs available to them” and deny the remaining allegations of
21 paragraph 36.

22 37. The Samsung Defendants admit that the appearance of the iPhone 4 is different
23 from previous versions of the iPhone. The Samsung Defendants aver that the appearances of the
24 iPhone products speak for themselves and deny the allegations of paragraph 37 to the extent they
25 do not accurately describe and compare the appearances of those products. The Samsung
26 Defendants deny that the iPhone 4 product design described in the Complaint immediately became
27 closely associated with Apple. The Samsung Defendants deny knowledge or information
28

1 sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 37 of
2 the Complaint and therefore deny them.

3 38. The Samsung Defendants deny the implication that the legal test for functionality
4 requires that the “overall product design is [] required to achieve a[] particular function” or that
5 there “are [not] numerous alternatives available to Apple’s competitors for their product designs”
6 and deny the remaining allegations of paragraph 38.

7 39. The Samsung Defendants aver that the various packages and packaging materials
8 of the iPhone products speak for themselves, and deny the allegations of paragraph 39 to the
9 extent they do not accurately describe their appearance. The Samsung Defendants deny
10 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
11 allegations in paragraph 39 of the Complaint and therefore deny them.

12 40. The Samsung Defendants deny the implication that the legal test for functionality
13 requires that the “overall product design is [] required to achieve a[] particular function” or that
14 competitors not have “alternative packaging options available” and deny the remaining allegations
15 of paragraph 40.

16 41. The Samsung Defendants aver that the appearances of the iPod touch products
17 speak for themselves and deny the allegations of paragraph 41 to the extent they do not accurately
18 describe the appearance of those products. The Samsung Defendants deny that the combination
19 of elements described in paragraph 41 of the Complaint is “innovative.” The Samsung
20 Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of
21 the remaining allegations in paragraph 41 of the Complaint and therefore deny them.

22 42. The Samsung Defendants deny that the iPod Touch design described in the
23 Complaint immediately became closely associated with Apple. The Samsung Defendants deny
24 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
25 allegations in paragraph 42 of the Complaint and therefore deny them.

26 43. The Samsung Defendants deny the implication that the legal test for functionality
27 requires that “the overall product design is [] dictated by function” or that alternative product
28 designs are not available and deny the remaining allegations of paragraph 43.

Alleged Trade Dress at Issue

1
2 57. The Samsung Defendants admit that the Complaint purports to refer to the elements
3 listed in paragraph 57 as the “Apple iPhone Trade Dress.” The Samsung Defendants deny that
4 the elements listed in paragraph 57 of the Complaint constitute protectable trade dress. The
5 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
6 falsity of the remaining allegations in paragraph 57 of the Complaint and therefore deny them.

7 58. The Samsung Defendants admit that the Complaint purports to refer to the elements
8 listed in paragraph 57 as the “Apple iPhone Trade Dress.” The Samsung Defendants deny that
9 the elements listed in paragraph 57 of the Complaint constitute protectable trade dress. The
10 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
11 falsity of the remaining allegations in paragraph 58 of the Complaint and therefore deny them.

12 59. The Samsung Defendants admit that the Complaint purports to refer to the elements
13 listed in paragraph 59 as the “Apple iPhone 3G Trade Dress.” The Samsung Defendants deny
14 that the elements listed in paragraph 59 of the Complaint constitute protectable trade dress. The
15 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
16 falsity of the remaining allegations in paragraph 59 of the Complaint and therefore deny them.

17 60. The Samsung Defendants admit that the Complaint purports to refer to the elements
18 listed in paragraph 59 as the “Apple iPhone 3G Trade Dress.” The Samsung Defendants deny
19 that the elements listed in paragraph 59 of the Complaint constitute protectable trade dress. The
20 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
21 falsity of the remaining allegations in paragraph 60 of the Complaint and therefore deny them.

22 61. The Samsung Defendants admit that the Complaint purports to refer to the elements
23 listed in paragraph 61 as the “Apple iPhone 4 Trade Dress.” The Samsung Defendants deny that
24 the elements listed in paragraph 61 of the Complaint constitute protectable trade dress. The
25 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
26 falsity of the remaining allegations in paragraph 61 of the Complaint and therefore deny them.

27 62. The Samsung Defendants admit that the Complaint purports to refer to the elements
28 listed in paragraph 61 as the “Apple iPhone 4 Trade Dress.” The Samsung Defendants deny that

1 the elements listed in paragraph 61 of the Complaint constitute protectable trade dress. The
2 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
3 falsity of the remaining allegations in paragraph 62 of the Complaint and therefore deny them.

4 63. The Samsung Defendants deny the Complaint purports to refer to the elements
5 listed in paragraph 63 as the “Apple iPhone Trade Dress.” The Samsung Defendants deny that
6 the elements listed in paragraph 63 of the Complaint constitute protectable trade dress. The
7 Samsung Defendants also aver that the elements listed as the “Apple iPhone Trade Dress” in
8 paragraph 63 of the Complaint are not identical to the elements listed as the “Apple iPhone Trade
9 Dress” in paragraph 57 of the Complaint, such that the Complaint sets forth two different
10 definitions of “Apple iPhone Trade Dress.” The Samsung Defendants deny knowledge or
11 information sufficient to form a belief as to the truth or falsity of the remaining allegations in
12 paragraph 63 of the Complaint and therefore deny them.

13 64. The Samsung Defendants admit that the Complaint purports to refer to the elements
14 listed in paragraph 63 as the “Apple iPhone Trade Dress.” The Samsung Defendants deny that
15 the elements listed in paragraph 63 of the Complaint constitute protectable trade dress. The
16 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
17 falsity of the allegations in paragraph 64 of the Complaint and therefore deny them.

18 65. The Samsung Defendants admit that the Complaint purports to refer to the elements
19 listed in paragraph 65 as the “Apple iPad Trade Dress.” The Samsung Defendants deny that the
20 elements listed in paragraph 65 of the Complaint constitute protectable trade dress. The
21 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
22 falsity of the remaining allegations in paragraph 65 of the Complaint and therefore deny them.

23 66. The Samsung Defendants admit that the Complaint purports to refer to the elements
24 listed in paragraph 65 as the “Apple iPad Trade Dress.” The Samsung Defendants deny that the
25 elements listed in paragraph 65 of the Complaint constitute protectable trade dress. The
26 Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or
27 falsity of the allegations in paragraph 66 of the Complaint and therefore deny them.

28

1 73. The Samsung Defendants admit that what Apple purports to be a true and correct
2 copy of U.S. Registration No. 3,889,685 is attached to the Complaint as Exhibit 26. The
3 Samsung Defendants aver that U.S. Registration No. 3,889,685 speaks for itself and deny the
4 allegations of paragraph 73 to the extent they do not accurately describe that registration.

5 74. The Samsung Defendants admit that what Apple purports to be a true and correct
6 copy of U.S. Registration No. 3,886,169 is attached to the Complaint as Exhibit 27. The
7 Samsung Defendants aver that U.S. Registration No. 3,886,169 speaks for itself and deny the
8 allegations of paragraph 74 to the extent they do not accurately describe that registration.

9 75. The Samsung Defendants admit that what Apple purports to be a true and correct
10 copy of U.S. Registration No. 3,886,197 is attached to the Complaint as Exhibit 28. The
11 Samsung Defendants aver that U.S. Registration No. 3,886,197 speaks for itself and deny the
12 allegations of paragraph 75 to the extent they do not accurately describe that registration.

13 76. The Samsung Defendants admit that the Complaint purports to refer collectively to
14 the icons displayed in paragraphs 70-75 of the Complaint as Apple's "Registered Icon
15 Trademarks." The Samsung Defendants deny knowledge or information sufficient to form a
16 belief as to the truth or falsity of the remaining allegations in paragraph 76 of the Complaint and
17 therefore deny them.

18 77. The Samsung Defendants admit that what Apple purports to be a true and correct
19 copy of U.S. Application Serial No. 85/041,463 is attached to the Complaint as Exhibit 29. The
20 Samsung Defendants admit that the Complaint purports to refer to the subject matter covered by
21 U.S. Application Serial No. 85/041,463 as the "Purple iTunes Store Trademark." The Samsung
22 Defendants aver that U.S. Application Serial No. 85/041,463 speaks for itself and deny the
23 allegations of paragraph 77 to the extent they do not accurately describe the subject matter covered
24 by that application. The Samsung Defendants deny knowledge or information sufficient to form
25 a belief as to the truth or falsity of the remaining allegations in paragraph 77 of the Complaint and
26 therefore deny them.

27 78. The Samsung Defendants admit that what Apple purports to be a true and correct
28 copy of U.S. Registration No. 2,935,038 is attached to the Complaint as Exhibit 30, which reflects

1 a registration date of March 22, 2005. The Samsung Defendants admit that the Complaint
2 purports to refer to the subject matter covered by U.S. Registration No. 2,935,038 as the “iTunes
3 Eighth Note and CD Design Trademark.” The Samsung Defendants aver that U.S. Registration
4 No. 2,935,038 speaks for itself and deny the allegations of paragraph 78 to the extent they do not
5 accurately describe the subject matter covered by that registration. The Samsung Defendants
6 deny knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
7 allegations in paragraph 78 of the Complaint and therefore deny them.

8 **Samsung’s Accused Products**

9 79. Denied.

10 80. The Samsung Defendants deny that they copied the alleged trade dress described in
11 the Complaint. The Samsung Defendants further deny that what the Complaint purports to
12 define as the Apple iPhone Trade Dress is “distinctive.” The Samsung Defendants admit that
13 SEC announced the Samsung F700 in February 2007 and that that product was released in Europe
14 in November of 2007. The Samsung Defendants deny knowledge or information sufficient to
15 form a belief as to the truth or falsity of the remaining allegations in paragraph 80 of the
16 Complaint and therefore deny them.

17 81. The Samsung Defendants deny that what the Complaint purports to define as the
18 “Apple iPhone 3G Trade Dress” is distinctive. The Samsung Defendants deny that they copied
19 what the Complaint purports to define as the “Apple iPhone 3G Trade Dress.” The Samsung
20 Defendants admit that the Galaxy i9000 was announced in Seoul, Korea in March of 2010.
21 The Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth
22 or falsity of the remaining allegations in paragraph 81 of the Complaint and therefore deny them.

23 82. The Samsung Defendants deny that what the Complaint purports to define as the
24 “Apple iPad Trade Dress” is distinctive. The Samsung Defendants deny that they copied what
25 the Complaint purports to define as the “Apple iPad Trade Dress.” The Samsung Defendants
26 aver that the Samsung Galaxy Tab speaks for itself, and deny the allegations of paragraph 82 to
27 the extent they do not accurately describe that product. The Samsung Defendants deny

28

1 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
2 allegations in paragraph 82 of the Complaint and therefore deny them.

3 83. The Samsung Defendants deny that what the Complaint purports to define as the
4 “Apple iPhone 4 Trade Dress” is distinctive. The Samsung Defendants deny that the Samsung
5 Galaxy S 2 phone copies what the Complaint purports to define as the “Apple iPhone/iPhone
6 3G/iPhone 4 Trade Dress.” The Samsung Defendants deny knowledge or information sufficient
7 to form a belief as to the truth or falsity of the remaining allegations in paragraph 83 of the
8 Complaint and therefore deny them.

9 84. The Samsung Defendants admit that the Best Buy in Union Square in New York
10 City began selling 16 GB versions of the Galaxy Tab 10.1 on June 8, 2011. The Samsung
11 Defendants deny that what the Complaint purports to define as the “Apple iPad 2 Trade Dress” is
12 distinctive. The Samsung Defendants admit that a report published on the Internet purportedly
13 quoted Lee Don-Joo as saying the statement appearing in quotation marks in paragraph 84 of the
14 Complaint, but deny that the statement included the words in brackets. The Samsung Defendants
15 further aver that the Galaxy Tab 10.1 products speak for themselves, and deny the allegations of
16 paragraph 84 to the extent they do not accurately describe them. The Samsung Defendants deny
17 that any Galaxy Tab 10.1 was overhauled to copy the iPad 2, or copied any alleged trade dress
18 belonging to Apple. The Samsung Defendants deny that the Galaxy Tab 10.1 appears “just like
19 an iPad” when it sits on a table. The Samsung Defendants are without knowledge or information
20 sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 84 of
21 the Complaint and therefore deny them.

22 85. Denied.

23 86. The Samsung Defendants admit that attached to the Complaint as Exhibit 31 is a
24 document Apple purports to be a true and correct copy of a July 15, 2010 article appearing on
25 www.wired.com by Priya Ganapati and that this document contains the quoted language. The
26 Samsung Defendants admit that attached to the Complaint as Exhibit 32 is a document that Apple
27 purports to be a true and correct copy of a August 16, 2010 article appearing on www.wired.com

28

1 by Terrence Russell, and that the document contains the quoted language. Except as expressly
2 admitted, the Samsung Defendants deny the allegations of Paragraph 86 of the Complaint.

3 87. The Samsung Defendants admit that attached to the Complaint as Exhibit 33 is a
4 document Apple purports to be a true and correct copy of a February 13, 2011 Business Insider
5 article by Dan Frommer and that this document contains the quoted language. The Samsung
6 Defendants admit that attached to the Complaint as Exhibit 34 is a document Apple purports to be
7 a true and correct copy of a May 10, 2011 article appearing on www.reviews.cnet.com by Eric
8 Franklin and that this document contains the quoted language. Except as expressly admitted, the
9 Samsung Defendants deny the allegations of Paragraph 87 of the Complaint.

10 88. The Samsung Defendants admit that attached to the Complaint as Exhibit 35 is a
11 document Apple purports to be a true and correct copy of a March 22, 2011
12 www.fastcompany.com article by Kit Eaton and that this document contains the quoted language,
13 except that the Samsung Defendants deny that the document contains the word in brackets.
14 Except as expressly admitted, the Samsung Defendants deny the allegations of Paragraph 88 of the
15 Complaint.

16 89. The Samsung Defendants admit that some of SEC and STA's past smartphones
17 have not used the identical icon configuration used in some of its present smartphones. The
18 Samsung Defendants deny that Apple's Complaint describes any protectable trade dress. Except
19 as expressly admitted, the Samsung Defendants deny the allegations of Paragraph 89 of the
20 Complaint.

21 90. The Samsung Defendants aver that their products and their packagings speak for
22 themselves, and deny the allegations of Paragraph 90 of the Complaint to the extent they do not
23 accurately describe those products or their packagings. The Samsung Defendants deny the
24 remaining allegations of Paragraph 90 of the Complaint.

25 91. Denied.

26 92. The Samsung Defendants deny that any of the products listed in paragraph 92 of
27 the Complaint infringe any of the alleged patent, trade dress, and/or trademark rights Apple
28 purports to assert in its Complaint. SEA denies that it has sold in the United States any of the

1 mobile phones listed in paragraph 92 of the complaint, or will sell any future mobile phone listed
2 in paragraph 92 of the Complaint. The Samsung Defendants further deny that they have ever
3 sold the Galaxy S i9000 or Galaxy Ace in the United States.

4 93. The Samsung Defendants deny that they have infringed any of the Apple utility
5 patents identified in the Complaint. The Samsung Defendants aver that they do not infringe any
6 of the Apple utility patents identified in the Complaint, and therefore deny the implication that
7 they needed to obtain permission from Apple.

8 94. Denied.

9 95. The Samsung Defendants admit that SEC announced the launch of the Galaxy S
10 i9000 in South Korea in March of 2010. The Samsung Defendants deny the implication that they,
11 or any U.S. carrier, ever offered the Galaxy S i9000 for sale in the United States. The Samsung
12 Defendants are without knowledge or information sufficient to form a belief as to the truth or
13 falsity of the remaining allegations in paragraph 95 of the Complaint and therefore deny them.

14 96. The Samsung Defendants deny that the Samsung Galaxy S 2 phone copies what the
15 Complaint purports to define as the “Apple iPhone/iPhone 3G/iPhone 4 Trade Dress.” The
16 Samsung Defendants deny that any Samsung Galaxy phone embodies any protectable Apple trade
17 dress. The Samsung Defendants aver that the Samsung Galaxy phones speak for themselves and
18 deny the allegations of paragraph 96 to the extent they do not accurately describe these products.

19 97. The Samsung Defendants aver that Samsung’s Galaxy phones speak for themselves
20 and deny the allegations of paragraph 97 to the extent they do not accurately describe these
21 products. The Samsung Defendants deny that any Samsung Galaxy phone embodies any
22 protectable Apple trade dress.

23 98. The Samsung Defendants deny that any Galaxy S2 smartphone will embody any
24 protectable Apple iPhone 4 trade dress. The Samsung Defendants aver that Samsung’s Galaxy
25 S2 smartphones will speak for themselves when they are released and deny the allegations of
26 paragraph 97 purporting to describe these future products as mere conjecture.

27 99. Denied.

28

1 100. The Samsung Defendants aver that the Samsung Galaxy Tab speaks for itself and
2 deny the allegations of paragraph 100 to the extent they do not accurately describe this product.

3 101. Denied.

4 102. The Samsung Defendants deny that the Samsung Galaxy Tab 10.1 tablet computer
5 incorporates any protectable Apple iPad or Apple iPad 2 trade dress. The Samsung Defendants
6 aver that Samsung's Galaxy Tab 10.1 speaks for itself and deny the allegations of paragraph 102
7 to the extent they do not accurately describe it.

8 103. The Samsung Defendants admit that the released version of the Galaxy Tab 10.1
9 does not include the TouchWiz graphical user interface. The Samsung Defendants deny that any
10 future versions of the Samsung Galaxy Tab 10.1 tablet computer will incorporate any protectable
11 Apple iPad or Apple iPad 2 trade dress.

12 104. Denied.

13 105. Denied.

14 106. The Samsung Defendants admit that their products may be used in public. The
15 Samsung Defendants deny the remaining allegations of paragraph 106.

16 107. The Samsung Defendants deny that they have copied any of Apple's purported
17 intellectual property rights, that they has reaped benefits from Apple's investment, that any such
18 alleged copying threatens to dilute the strength of any alleged Apple trade dress and icon
19 trademarks as source identifiers, or that any such alleged copying threatens to diminish any
20 goodwill that Apple alleges to have cultivated with its products. The Samsung Defendants deny
21 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
22 allegations in paragraph 107 of the Complaint and therefore deny them.

23 108. Denied.

24 109. The Samsung Defendants deny that they have copied Apple's alleged "innovations
25 and intellectual property." The Samsung Defendants admit that they have not ceased competing
26 with Apple notwithstanding Apple's efforts to avoid such competition. The Samsung Defendants
27 further admit that Apple purports that litigation is "its only choice" to respond to the Samsung
28 Defendants' products. The Samsung Defendants deny knowledge or information sufficient to

1 form a belief as to the truth or falsity of the remaining allegations in paragraph 109 of the
2 Complaint and therefore deny them.

3 **FIRST CLAIM FOR RELIEF**

4 **(Federal False Designation of Origin & Unfair Competition)**

5 **(15 U.S.C. § 1125(a))**

6 110. The Samsung Defendants repeat and incorporate the admissions and denials of
7 paragraphs 1 through 109 above as if fully set forth herein.

8 111. Denied.

9 112. Denied.

10 113. Denied.

11 114. Denied.

12 115. Denied.

13 116. Denied.

14 117. Denied.

15 118. The Samsung Defendants admit that they knew of some versions of the iPhone and
16 iPad when the Galaxy phone and tablet computer products were designed. The Samsung
17 Defendants admit that they have not ceased competing with Apple notwithstanding Apple's efforts
18 to avoid such competition. The Samsung Defendants deny that any of the trade dress alleged in
19 paragraph 118 of the Complaint is protectable. The Samsung Defendants deny the remaining
20 allegations of paragraph 118 of the Complaint.

21 119. Denied.

22 120. Denied.

23 121. Denied.

24 122. Denied.

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SECOND CLAIM FOR RELIEF
(Federal Trade Dress Infringement)
(15 U.S.C. § 1114)

123. The Samsung Defendants repeat and incorporate the admissions and denials of paragraphs 1 through 122 above as if fully set forth herein.

124. The Samsung Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 124 of the Complaint and therefore deny them.

125. The Samsung Defendants aver that U.S. Registration No. 3,470,983 speaks for itself and deny the allegations of paragraph 125 of the Complaint to the extent they do not accurately describe that registration.

126. The Samsung Defendants aver that U.S. Registration No. 3,475,218 speaks for itself, and deny the allegations of paragraph 126 of the Complaint to the extent they do not accurately describe that registration.

127. The Samsung Defendants aver that U.S. Registration No. 3,475,327 speaks for itself, and deny the allegations of paragraph 127 of the Complaint to the extent they do not accurately describe that registration.

128. Denied.

129. Denied.

130. Denied.

131. The Samsung Defendants admit that they have not ceased competing with Apple notwithstanding Apple’s efforts to avoid such competition. The Samsung Defendants deny that they have ever used what the Complaint purports to describe as the “Apple Registered Trade Dress.” The Samsung Defendants deny the remaining allegations of paragraph 131 as moot.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

1 136. Denied.

2 137. Denied.

3 **THIRD CLAIM FOR RELIEF**
4 **(Federal Trademark Infringement)**
5 **(15 U.S.C. § 1114)**

6 138. The Samsung Defendants repeat and incorporate the admissions and denials of
7 paragraphs 1 through 137 above as if fully set forth herein.

8 139. The Samsung Defendants deny knowledge or information sufficient to form a
9 belief as to the truth or falsity of the allegations in paragraph 139 of the Complaint and therefore
10 deny them.

11 140. Denied.

12 141. Denied.

13 142. Denied.

14 143. Denied.

15 144. Denied.

16 145. Denied.

17 146. Denied.

18 147. Denied.

19 148. Denied.

20 149. Denied

21 **FOURTH CLAIM FOR RELIEF**
22 **(Federal Trade Dress Dilution)**
23 **(15 U.S.C. § 1125(c))**

24 150. The Samsung Defendants repeat and incorporate the admissions and denials of
25 paragraphs 1 through 149 above as if fully set forth herein.

26 151. Denied.

27 152. Denied.

28 153. Denied.

1 154. Denied.

2 155. Denied.

3 156. The Samsung Defendants admit that they knew of some versions of the iPhone and
4 iPad when the Galaxy phone and tablet computer products were designed. The Samsung
5 Defendants admit that they have not ceased competing with Apple notwithstanding Apple's efforts
6 to avoid such competition. The Samsung Defendants deny that any of the trade dress alleged in
7 paragraph 156 of the Complaint is protectable. The Samsung Defendants deny the remaining
8 allegations of paragraph 156 of the Complaint.

9 157. Denied.

10 158. Denied.

11 159. Denied.

12 160. Denied.

13 **FIFTH CLAIM FOR RELIEF**

14 **(Common Law Trademark Infringement)**

15 161. The Samsung Defendants repeat and incorporate the admissions and denials of
16 paragraphs 1 through 160 above as if fully set forth herein.

17 162. Denied.

18 163. Denied.

19 164. Denied.

20 165. Denied.

21 166. The Samsung Defendants deny that they have used what the Complaint purports to
22 describe as "Apple's Registered Icon Trademarks" and the "Purple iTunes Store Trademark."
23 The Samsung Defendants deny the remaining allegations of paragraph 166 of the Complaint as
24 moot.

25 167. Denied.

26 168. Denied.

27 169. Denied.

28 170. Denied.

1 171. Denied.

2 **SIXTH CLAIM FOR RELIEF**

3 **(Unfair Business Practices – California Business and Professions Code § 17200, et seq.)**

4 172. The Samsung Defendants repeat and incorporate the admissions and denials of
5 paragraphs 1 through 171 above as if fully set forth herein.

6 173. Denied.

7 174. Denied.

8 175. Denied.

9 176. Denied.

10 177. Denied.

11 178. Denied.

12 179. Denied.

13 180. Denied.

14 181. Denied.

15 182. Denied.

16 **SEVENTH CLAIM FOR RELIEF**

17 **(Unjust Enrichment)**

18 183. The Samsung Defendants repeat and incorporate the admissions and denials of
19 paragraphs 1 through 182 above as if fully set forth herein.

20 184. The Samsung Defendants admit that Apple’s Complaint purports to seek a
21 worldwide accounting and disgorgement. The Samsung Defendants deny the remaining
22 allegations of paragraph 184 of the Complaint.

23 **EIGHTH CLAIM FOR RELIEF**

24 **(Infringement of the ‘002 Patent)**

25 185. The Samsung Defendants repeat and incorporate the admissions and denials of
26 paragraphs 1 through 184 above as if fully set forth herein.

27 186. Denied.

28 187. Denied.

1 188. Denied.

2 189. Denied.

3 190. Denied.

4 **NINTH CLAIM FOR RELIEF**

5 **(Infringement of the ‘381 Patent)**

6 191. The Samsung Defendants repeat and incorporate the admissions and denials of
7 paragraphs 1 through 190 above as if fully set forth herein.

8 192. Denied.

9 193. Denied.

10 194. Denied.

11 195. Denied.

12 196. Denied.

13 **TENTH CLAIM FOR RELIEF**

14 **(Infringement of the ‘607 Patent)**

15 197. The Samsung Defendants repeat and incorporate the admissions and denials of
16 paragraphs 1 through 196 above as if fully set forth herein.

17 198. Denied.

18 199. Denied.

19 200. Denied.

20 201. Denied.

21 202. Denied.

22 **ELEVENTH CLAIM FOR RELIEF**

23 **(Infringement of the ‘828 Patent)**

24 203. The Samsung Defendants repeat and incorporate the admissions and denials of
25 paragraphs 1 through 202 above as if fully set forth herein.

26 204. Denied.

27 205. Denied.

28 206. Denied.

1 207. Denied.

2 208. Denied.

3 **TWELFTH CLAIM FOR RELIEF**

4 **(Infringement of the ‘915 Patent)**

5 209. The Samsung Defendants repeat and incorporate the admissions and denials of
6 paragraphs 1 through 208 above as if fully set forth herein.

7 210. Denied.

8 211. Denied.

9 212. Denied.

10 213. Denied.

11 214. Denied.

12 **THIRTEENTH CLAIM FOR RELIEF**

13 **(Infringement of the ‘891 Patent)**

14 215. The Samsung Defendants repeat and incorporate the admissions and denials of
15 paragraphs 1 through 214 above as if fully set forth herein.

16 216. Denied.

17 217. Denied.

18 218. Denied.

19 219. Denied.

20 220. Denied.

21 **FOURTEENTH CLAIM FOR RELIEF**

22 **(Infringement of the ‘163 Patent)**

23 221. The Samsung Defendants repeat and incorporate the admissions and denials of
24 paragraphs 1 through 220 above as if fully set forth herein.

25 222. Denied.

26 223. Denied.

27 224. Denied.

28 225. Denied.

1 226. Denied.

2 **FIFTEENTH CLAIM FOR RELIEF**

3 **(Infringement of the ‘129 Patent)**

4 227. The Samsung Defendants repeat and incorporate the admissions and denials of
5 paragraphs 1 through 226 above as if fully set forth herein.

6 228. Denied.

7 229. Denied.

8 230. Denied.

9 231. Denied.

10 232. Denied.

11 **SIXTEENTH CLAIM FOR RELIEF**

12 **(Infringement of the ‘D790 Patent)**

13 233. The Samsung Defendants repeat and incorporate the admissions and denials of
14 paragraphs 1 through 232 above as if fully set forth herein.

15 234. Denied.

16 235. Denied.

17 236. Denied.

18 237. Denied.

19 238. Denied.

20 **SEVENTEENTH CLAIM FOR RELIEF**

21 **(Infringement of the ‘D334 Patent)**

22 239. The Samsung Defendants repeat and incorporate the admissions and denials of
23 paragraphs 1 through 238 above as if fully set forth herein.

24 240. Denied.

25 241. Denied.

26 242. Denied.

27 243. Denied.

28 244. Denied.

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EIGHTEENTH CLAIM FOR RELIEF

(Infringement of the ‘D305 Patent)

245. The Samsung Defendants repeat and incorporate the admissions and denials of paragraphs 1 through 244 above as if fully set forth herein.

- 246. Denied.
- 247. Denied.
- 248. Denied.
- 249. Denied.
- 250. Denied.

NINETEENTH CLAIM FOR RELIEF

(Infringement of the ‘D677 Patent)

251. The Samsung Defendants repeat and incorporate the admissions and denials of paragraphs 1 through 250 above as if fully set forth herein.

- 252. Denied.
- 253. Denied.
- 254. Denied.
- 255. Denied.
- 256. Denied.

TWENTIETH CLAIM FOR RELIEF

(Infringement of the ‘D889 Patent)

257. The Samsung Defendants repeat and incorporate the admissions and denials of paragraphs 1 through 256 above as if fully set forth herein.

- 258. Denied.
- 259. Denied.
- 260. Denied.
- 261. Denied.
- 262. Denied.

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TWENTY-FIRST CLAIM FOR RELIEF

(Infringement of the ‘D087 Patent)

263. The Samsung Defendants repeat and incorporate the admissions and denials of paragraphs 1 through 262 above as if fully set forth herein.

264. Denied.

265. Denied.

266. Denied.

267. Denied.

268. Denied.

TWENTY-SECOND CLAIM FOR RELIEF

(Infringement of the ‘D270 Patent)

269. The Samsung Defendants repeat and incorporate the admissions and denials of paragraphs 1 through 268 above as if fully set forth herein.

270. Denied.

271. Denied.

272. Denied.

273. Denied.

274. Denied.

The Samsung Defendants deny that Apple is entitled to the judgment sought, set forth in paragraphs 1-14 on pages 60-61 of its Complaint.

II. AFFIRMATIVE DEFENSES

275. By alleging the Affirmative Defenses set forth below, the Samsung Defendants do not agree or concede that they bear the burden of proof or the burden of persuasion on any of these issues, whether in whole or in part. For their Affirmative Defenses to the Complaint, the Samsung Defendants allege as follows:

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FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

276. Apple’s Complaint, on one or more claims for relief set forth therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Patent Non-Infringement)

277. The Samsung Defendants have not infringed, and currently do not infringe, the ‘002, ‘381, ‘607, ‘828, ‘915, ‘891, ‘163 or ‘129 (the “Apple Utility Patents”) or the ‘D790, ‘D334, ‘D305, or ‘D677, ‘D889, ‘D087 or ‘D270 Patents (the “Apple Design Patents”) (the Apple Utility Patents and the Apple Design Patents are, collectively, the “Apple Patents in Suit”) directly, indirectly, contributorily, by inducement, under the doctrine of equivalents, or in any other manner.

THIRD AFFIRMATIVE DEFENSE

(Patent Invalidity)

278. The claims of the Apple Patents in Suit are invalid for failure to satisfy one or more of the conditions for patentability specified in Title 35 of the United States Code, including without limitation §§ 101, 102, 103, 112, and/or 171.

FOURTH AFFIRMATIVE DEFENSE

(No Valid Trademark or Trade Dress)

279. Apple has no valid, protectable marks or trade dress in which it enjoys any rights that may be asserted against the Samsung Defendants.

FIFTH AFFIRMATIVE DEFENSE

(Functionality)

280. The claims made in the Complaint and the relief sought therein are barred, in whole or in part, on the basis that the alleged marks at issue, the alleged trade dress at issue, the Apple Design Patents, and the use of said marks, said trade dress and said Apple Design Patents are functional.

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SIXTH AFFIRMATIVE DEFENSE

(Lack of Secondary Meaning and/or Distinctiveness)

281. The claims made in the Complaint and the relief sought therein are barred, in whole or in part, on the basis that the marks and alleged trade dress at issue lack distinctiveness, including, without limitation, secondary meaning.

SEVENTH AFFIRMATIVE DEFENSE

(Generic Terms)

282. The claims made in the Complaint and the relief sought therein are barred, in whole or in part, on the basis that the marks and alleged trade dress at issue are generic.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver, Acquiescence, and Estoppel)

283. Each of the purported claims set forth in Apple’s Complaint is barred by the doctrines of waiver, acquiescence, and estoppel.

NINTH AFFIRMATIVE DEFENSE

(Laches)

284. The Apple Patents in Suit and the marks and alleged trade dress at issue are unenforceable, in whole or in part, against the Samsung Defendants under the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

(Abandonment)

285. The claims made in the Complaint are barred, in whole or in part, by abandonment of the marks and alleged trade dress at issue.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

286. The claims made in the Complaint are barred, in whole or in part, because of Apple’s failure to mitigate damages, if such damages exist.

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TWELFTH AFFIRMATIVE DEFENSE

(Prosecution History Estoppel)

287. The relief sought by Apple as to the claims of one or more of the Apple Patents in Suit is barred under the doctrine of prosecution history estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

(Prosecution Laches)

288. One or more of the Apple Patents in Suit are unenforceable, in whole or in part, against the Samsung Defendants under the doctrine of prosecution laches.

FOURTEENTH AFFIRMATIVE DEFENSE

(Acts of Plaintiff)

289. On information and belief, the damages, if any, that were allegedly sustained by Apple as a result of the acts complained of in the Complaint were caused in whole or in part or were contributed to by reason of the acts, omissions, negligence, and/or intentional misconduct of Apple, its agents, predecessors, and/or related entities.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Equitable Relief)

290. As a result of Apple's actions, Apple is not entitled to equitable relief, including but not limited to Apple's request for injunctive relief as it has an adequate remedy at law.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Willful Infringement)

291. Apple's claims for enhanced damages and an award of fees and costs against the Samsung Defendants have no basis in fact or law and should be denied.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Third-Party Use)

292. The claims made in the Complaint are barred, in whole or in part, by reason of other parties' use of any trademarks or trade dress at issue.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Actions of Others)

293. The claims made in the Complaint are barred, in whole or in part, because the Samsung Defendants are not liable for the acts of others over whom it has no control.

NINETEENTH AFFIRMATIVE DEFENSE

(No Causation)

294. Apple’s claims against the Samsung Defendants are barred because Apple’s damages, if any, were not caused by the Samsung Defendants.

TWENTIETH AFFIRMATIVE DEFENSE

(No Damage)

295. Without admitting that the Complaint states a claim, there has been no damage in any amount, manner or at all by reason of any act alleged against the Samsung Defendants in the Complaint, and the relief prayed for in the Complaint therefore cannot be granted.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Irreparable Harm)

296. Apple’s claims for injunctive relief are barred because Apple cannot show that it will suffer any irreparable harm from the Samsung Defendants’ actions.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

297. The alleged injury or damage suffered by Apple, if any, would be adequately compensated by damages. Accordingly, Apple has a complete and adequate remedy at law and is not entitled to seek equitable relief.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Duplicative Claims)

298. Without admitting that the Complaint states a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims against the Samsung Defendants or others for any alleged single wrong.

TWENTY-FOURTH AFFIRMATIVE DEFENSE**(No Punitive Damages)**

299. The Samsung Defendants allege that no punitive or exemplary damages should be awarded arising out of the claims made in the Complaint under the law of the United States and California because: (i) an award of punitive or exemplary damages would be unconstitutional under the United States and California Constitutions; specifically, the First Amendment to the United States Constitution and Article I, Section 2 of the California Constitution; (ii) any recovery of punitive or exemplary damages arising out of the claims made in the Fourth Amended Complaint would constitute the imposition of a criminal fine or penalty without the substantive or procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 7 of the California Constitution; (iii) the imposition of any punitive or exemplary damages in this lawsuit would constitute an excessive fine or penalty under Article I, Section 17 of the California Constitution; (iv) any such award is precluded or limited pursuant to Section 3294 of the California Civil Code or the United States Constitution and the due process clause; and (v) punitive damages would violate the United States and California Constitutions and common law because such an award is based from procedures that are vague, open-ended, unbound in discretion, arbitrary and without sufficient constraints or protection against arbitrary and excessive awards.

ADDITIONAL DEFENSES

300. The Samsung Defendants reserve the right to assert additional defenses based on information learned or obtained during discovery.

III. COUNTERCLAIMS

1. SEC and STA (collectively, the “Samsung Patent Counterclaimants”), by and through their undersigned counsel, seek declarations and judgments that Apple infringes U.S. Patent No. 6,928,604 (the “604 patent”), U.S. Patent No. 7,050,410 (the “410 patent”), U.S. Patent No. 7,069,055 (the “055 patent”), U.S. Patent No. 7,079,871 (the “871 patent”), U.S. Patent No. 7,200,792 (the “792 patent”), U.S. Patent No. 7,362,867 (the “867 patent”), U.S.

1 Patent No. 7,386,001 (the “‘001 patent”), U.S. Patent No. 7,447,516 (the “‘516 patent”), U.S.
2 Patent No. 7,456,893 (the “‘893 patent”), U.S. Patent No. 7,577,460 (the “‘460 patent”), U.S.
3 Patent No. 7,675,941 (the “‘941 patent”), and U.S. Patent No. 7,698,711 (the “‘711 patent”),
4 (collectively the “Samsung’s Patents In Suit”).

5 2. SEC, SEA and STA (collectively, the “Samsung Counterclaimants”), by and
6 through their undersigned counsel, also seek declarations that each of the Apple Patents In Suit is
7 invalid and has not been and is not infringed by them. The Samsung Counterclaimants also seek
8 declarations of invalidity and non-infringement with regard to U.S. Trademark Registration Nos.
9 3,470,983 (the “‘983 Registration”), 3,457,218 (the “‘218 Registration”), 3,475,327 (the “‘327
10 Registration”), 3,886,196 (the “‘196 Registration”), 3,889,642 (the “‘642 Registration”),
11 3,886,200 (the “‘200 Registration”), 3,889,685 (the “‘685 Registration”), 3,886,169 (the “‘169
12 Registration”), 3,886,197 (the “‘197 Registration”), and 2,935,038 (the “‘038 Registration”
13 (collectively, the “Registrations in Suit”), U.S. Application Serial No. 85/041463 (the “‘463
14 Application”), U.S. Application Serial No. 77/921,838 (the “‘838 Application”), U.S. Application
15 Serial No. 77/921,829 (the “‘829 Application”), U.S. Application Serial No. 77/921,869 (the “‘869
16 Application”), U.S. Application Serial No. 85/299,118 (the “‘118 Application”) and certain
17 unregistered trade dress that Apple alleges is embodied in Apple’s iPhone, iPhone 3G, iPhone
18 3GS, iPhone 4, iPod Touch, iPad and iPad 2 products. The Samsung Counterclaimants also seek
19 cancellations of the invalid Registrations in Suit. The Samsung Counterclaimants further seek
20 declarations of nonviolations of California Business and Professions Code §17200, of the common
21 law of trademarks and unfair competition, and of the law of unjust enrichment.

22 **NATURE OF THE ACTION**

23 3. This is an action for patent infringement. Apple has infringed and continues to
24 infringe, contribute to the infringement of, and/or actively induce others to infringe Samsung’s
25 Patents In Suit.

26 4. This is also an action for a declaratory judgment of invalidity and non-infringement
27 of patents, trademarks, and trade dress Apple purports to own; cancellation of improperly granted
28 U.S. trademark and trade dress registrations; and non-violation of the Lanham Act, of California

1 Business and Professions Code §17200, and of the common law of trademarks and unjust
2 enrichment.

3 **THE PARTIES**

4 5. Counterclaimant SEC is a corporation organized under the laws of Korea, with its
5 principal place of business at 416 Maetan-3dong, Yeongtong-gu, Suwon-City, Gyeonggi-do,
6 Korea 443-742.

7 6. Counterclaimant SEA is a New York corporation, with its principal place of
8 business at 85 Challenger Road, Ridgefield Park, NJ, 07660.

9 7. Counterclaimant STA is a limited liability company organized under the laws of
10 Delaware, with its principal place of business at 1301 East Lookout Drive, Richardson, Texas
11 75082.

12 8. Upon information and belief, Apple is a corporation organized under the laws of
13 the state of California and has its principal place of business at 1 Infinite Loop, Cupertino,
14 California 95014. Upon information and belief, Apple imports into the United States, offers for
15 sale, sells and/or uses in the United States mobile electronic devices.

16 **JURISDICTIONAL STATEMENT**

17 9. The Samsung Patent Counterclaimants' patent infringement counterclaims arise
18 under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* The Samsung
19 Counterclaimants' counterclaims for declaratory relief arise under the Declaratory Judgment Act,
20 28 U.S.C. § 2201, *et seq.*, the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, the Lanham
21 Act, 15 U.S.C. § 1051, *et seq.*, California Business and Professions Code § 17200, the common
22 law of trademarks and unfair competition, and the law of unjust enrichment.

23 10. The Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28
24 U.S.C. §§ 1331, 1338(a) & (b), 1367, 2201(a) and 2202.

25 11. This Court has personal jurisdiction over Apple for at least the following reasons:
26 (i) Apple maintains its principal place of business in this District; (ii) Apple has designated an
27 agent for service of process in the state of California; (iii) Apple regularly does business or solicits
28 business, engages in other persistent courses of conduct, and/or derives substantial revenue from

1 products and/or services provided to individuals in this District and in this state; and (iv) Apple
2 has initiated litigation in this judicial District in connection with this dispute.

3 12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

4 13. An immediate, real, and justiciable controversy exists between the Samsung
5 Counterclaimants and Apple as to whether the '828, '002, '381, '915, '891, '607, '163, '129,
6 'D790, 'D334, 'D305, 'D087, 'D677, 'D270, and 'D889 Patents are invalid and have not been
7 infringed.

8 14. An immediate, real, and justiciable controversy also exists between the Samsung
9 Counterclaimants and Apple as to whether the Samsung Counterclaimants violate the Lanham Act
10 with regard to the '983, '218, '327, '196, '642, '200, '685, '169, '197, and '038 Registrations and
11 certain unregistered trade dress that Apple alleges is embodied in Apple's iPhone, iPhone 3G,
12 iPhone 3GS, iPhone 4, iPod Touch, iPad and iPad 2 products.

13 15. An immediate, real, and justiciable controversy also exists between the Samsung
14 Counterclaimants and Apple as to whether the '983, '218, '327, '196, '642, '200, '685, '169, '197,
15 and '038 Registrations and the '463, '838, '829, '869, and '118 Applications are invalid and
16 whether said registrations should be cancelled.

17 16. An immediate, real, and justiciable controversy also exists between the Samsung
18 Counterclaimants and Apple as to whether the Samsung Counterclaimants violate California
19 Business and Professions Code § 17200 with regard to the Apple Patents In Suit, the '983, '218,
20 '327, '196, '642, '200, '685, '169, '197, and '038 Registrations, and certain unregistered trade
21 dress that Apple alleges is embodied in Apple's iPhone, iPhone 3G, iPhone 3GS, iPhone 4, iPod
22 Touch, iPad and iPad 2 products.

23 17. An immediate, real, and justiciable controversy also exists between the Samsung
24 Counterclaimants and Apple as to whether the Samsung Counterclaimants violate the common
25 law of trademarks with regard to the '196, '642, '200, '685, '169, '197, and '038 Registrations or
26 the '463 Application.

27 18. An immediate, real, and justiciable controversy also exists between the Samsung
28 Counterclaimants and Apple as to whether the Samsung Counterclaimants violate the law of

1 unjust enrichment with regard to the Apple Patents In Suit, the ‘983, ‘218, ‘327, ‘196, ‘642, ‘200,
2 ‘685, ‘169, ‘197, and ‘038 Registrations, the ‘463, ‘838, ‘829, ‘869, and ‘118 Applications and
3 certain unregistered trade dress that Apple alleges is embodied in Apple’s iPhone, iPhone 3G,
4 iPhone 3GS, iPhone 4, iPod Touch, iPad and iPad 2 products.

5 **FACTUAL BACKGROUND**

6 19. From its inception as a small business in Taegu, Korea, SEC and its subsidiary,
7 Samsung Telecommunications America, LLC (collectively, “Samsung”), has grown to become
8 one of the world’s leading electronics companies, specializing in digital products and media,
9 semiconductors, memory, and system integration. Today Samsung’s innovative and top quality
10 consumer products are widely recognized and appreciated across the globe.

11 20. Samsung has a long history of groundbreaking innovation across a wide range of
12 technologies. Samsung’s commitment to innovation is demonstrated in part by the billions of
13 dollars in research and development expenditures incurred over the years. From 2005 through
14 2010 alone, Samsung invested more than \$35 billion in research and development. More than a
15 quarter of all Samsung employees – over 50,100 engineers overall, including about 8,700 in
16 telecommunications – daily engage in cutting-edge research and development projects.

17 21. Samsung’s commitment to innovation and investment in research and development
18 is demonstrated by the fact that Samsung has in its portfolio as of April 1, 2011, 28,700 United
19 States patents, including 5,933 in the telecommunications field. Samsung is consistently ranked
20 ahead of other technology companies in terms of the number of issued patents obtained in the
21 United States, with 4,551 issued patents in 2010 alone.

22 22. Samsung’s research and development successes have propelled the company to its
23 status as the largest provider by volume of mobile devices in the United States and the second
24 largest in the world. During the last half of 2010, Samsung sold more Android-based devices
25 worldwide than any other company.

26 23. Samsung has been a pioneer in the mobile device business sector since the
27 inception of the mobile device industry. In 1999, Samsung introduced its first multi-function
28 “smart phone” that provided both internet access (for sending e-mails and for electronic chatting)

1 and personal digital assistant (“PDA”) features. In 2000, Samsung introduced the Samsung
2 Uproar SPH-M100, the first cell phone with MP3-playback functionality. In 2001 Samsung
3 introduced into the United States the first PDA phone with a 256-color screen, selected as one of
4 the Best Products of 2001 by BusinessWeek magazine.

5 24. Also in 2001, Samsung broke the 1 cm technological barrier and stunned the
6 industry with an ultra-slim, lightweight flip phone that was only 9.8 mm thick. This innovation
7 sparked the ultra-portable mobile phone revolution spurring dozens of competitors to slim down
8 the design form factors and develop their own portable mobile phone technology design. In
9 2002, Samsung unleashed the world’s first high-definition color LCD display suitable for mobile
10 devices. Now users could browse the web and view images directly from their mobile devices in
11 true color. In 2004, after selling over 20 million mobile handsets in the United States, Samsung
12 announced the first mobile phone that supported digital multimedia broadcast via satellite. Users
13 could now watch streaming high-quality multimedia content wherever they traveled.

14 25. Samsung announced the world’s first five and seven megapixel camera phones in
15 late 2004 and early 2005, respectively. Now, mid- to high-range digital camera functionality
16 could be integrated with mobile handsets, allowing users to snap life-like photos on-the-go. In
17 2008, Samsung became the leading mobile handset vendor in the United States.

18 26. Samsung has also continuously innovated in the area of mobile phone displays. In
19 2008 and 2009, Samsung released the industry’s first high resolution AMOLED display for a
20 mobile phone. The new display featured a 180-degree viewing angle and reduced power
21 consumption when compared to traditional LCD displays. Samsung’s clearer and brighter Super
22 AMOLED displays continued to improve mobile phone displays with 30% better color
23 reproduction over the best quality LCD displays.

24 27. Samsung’s innovative features, including the integrated high resolution cameras
25 and displays, were the result of the exceptional creativity and ingenuity of thousands of Samsung
26 engineers across the globe engaged in cutting-edge research and development projects.

27 28. Samsung’s innovative contributions to the mobile device industry have been
28 recognized through numerous awards for excellence in mobile device design. For example,

1 Samsung has received numerous “Red Dot Design Awards” in one of the largest international
2 design competitions. Similarly, a number of Samsung mobile devices have been awarded the “iF
3 Design Award” from the iF Industrie Forum Design e.V., based in Germany, for features such as
4 the user interface. The iF Designs Awards are among the most important in the world, as
5 evidenced by more than 11,000 annual entries from almost 50 countries. Samsung has also
6 received a number of “Good Design Awards” from the Japan Industrial Design Promotion
7 Organization (JIDPO). Overall, Samsung’s mobile phones and devices have won close to 60
8 awards between 2007 and the beginning of 2011.

9 29. Samsung has consistently introduced market-relevant and innovative products,
10 including over 1,500 mobile phone models incorporating Samsung patented technology into the
11 U.S. marketplace since 1997. Over 281 million Samsung mobile devices have been sold since
12 1997.

13 30. Without the ability to enforce its intellectual property rights, such as those
14 relating to mobile device technology at issue in this action, Samsung would not be able to sustain
15 the extensive commitment to research and development that has enabled it to lead the way into
16 numerous improvements across a broad range of technologies, including the mobile device
17 technologies at issue in this action.

18 **SAMSUNG’S INTELLECTUAL PROPERTY RIGHTS**

19 31. Samsung’s patents relate to fundamental innovations that increase mobile device
20 reliability, efficiency, and quality, and improve user interface in mobile handsets and other
21 products. These innovations are critical to the user’s ability to communicate with family, friends,
22 and business associates reliably and effectively.

23 32. In communications systems, standards that prescribe the formats for sending
24 information are essential to ensure that mobile devices made by different manufacturers are
25 capable of interacting within a network. Because interoperability is key for communications, the
26 development of protocols that ultimately result in a technical standard is very important to
27 ensuring an efficient and functional system. As modern wireless networks carry more data at
28 higher data rates and service more users than their predecessors, continued innovation is essential

1 to keep pace with the increased demands on cellular networks. Samsung has been a leader in
2 developing the ideas and protocols needed to increase the efficiency, reliability, and functionality
3 of standards-based networks and the features available in these networks.

4 33. In the United States, one of the key standards governing cellular communications,
5 known as Wideband Code-Division Multiple-Access (W-CDMA), is published by 3GPP (Third
6 Generation Partnership Project). W-CDMA is one of the main technologies for the
7 implementation of third-generation (3G) and more advanced cellular networks such as those of
8 AT&T and T-Mobile. W-CDMA is the most common form of air interface standard within the
9 Universal Mobile Telecommunications System (UMTS) telecommunications technologies
10 standard. Samsung has made key inventions that are part of these standards.

11 34. The Samsung W-CDMA and UMTS patents at issue in this action relate to
12 reliability, capacity, efficiency, compatibility, and functioning of mobile devices in W-CDMA and
13 UMTS networks.

14 35. Samsung's technology relating to transmission of multiple streams, including
15 voice and data, onto a single radio channel, allows users to talk on a mobile device and view and
16 transmit information at the same time.

17 36. Samsung's technology increases the reliability of mobile devices. In particular,
18 Samsung's technology increases the fidelity of transmission of data such as e-mail, text messages,
19 and attachments sent by the user from the mobile device.

20 37. Samsung's technology increases the throughput and capacity of mobile device
21 networks. The rapid increase in usage of the mobile device networks has led to unprecedented
22 demand for increased capacity and throughput, particularly as data-demanding applications such
23 as video have become widespread. Samsung's technology enables a given network to pack in
24 more users' data without increasing the size of the frequency band used, and can therefore
25 accommodate a larger number of users.

26 38. Samsung's technology reduces interference among mobile devices. As more and
27 more mobile devices are used in today's networks, the likelihood of interference among different
28 devices increases, and therefore regulation of the amount of transmit power is important.

1 Samsung's technology provides techniques to regulate the amount of power transmitted by mobile
2 devices, reducing interference in cellular communications.

3 39. The Samsung user interface patents at issue in this action relate to generating and
4 displaying time, viewing and transmitting images, playing music, and dividing of window displays
5 on mobile devices.

6 40. As users travel across time zones, the ability of a mobile device to update to the
7 local time is important for tracking appointments and meetings. Samsung's technology provides
8 a means for a mobile device to control and display world time.

9 41. It is useful for users of mobile devices to be able to access other functions on the
10 device while composing a message, without losing the message or breaking the flow of user input.
11 Samsung's technology provides a window-dividing function that shows the message on one part
12 of the display while allowing the user to view other functionality on another part of the display.

13 42. When the camera function of a mobile device is used, it is convenient for users to
14 be able to view the pictures on the device itself and share certain pictures with other users.
15 Samsung's technology enables the sending of images via e-mail transmission and provides users
16 convenient ways for viewing images on the mobile device.

17 43. Mobile devices often include the ability to play music. Samsung's technology
18 allows the use of multi-tasking in a mobile communication device where the playback of music
19 continues while the user performs another function on the device.

20 44. Samsung has sold millions of mobile phones in the United States incorporating
21 the patented technology at issue here. For example, in 2010, Samsung sold over 24 million
22 mobile phones incorporating Samsung's innovations that reduce data transmission errors,
23 including the Samsung Galaxy S 4G. The Samsung Galaxy S 4G has been heralded by CNET as
24 a "fantastic Android smartphone" that delivers "fast data speeds," and PC Magazine named the
25 Samsung Galaxy S 4G one of the best AT&T and T-Mobile phones.

26 45. Samsung's Captivate and Vibrant mobile phone models, which also incorporate
27 the patented technologies at issue here, were both named to PC Magazine's Top 10 Smartphones
28

1 list, with the Samsung Captivate being described as a “super-phone,” and the Samsung Vibrant
2 being described as T-Mobile’s “top smartphone.”

3 46. Apple has copied many of Samsung’s innovations in its Apple iPhone, iPod, and
4 iPad products. Apple continues to violate Samsung’s patent rights by using these patented
5 technologies without a license.

6 47. SEC is the owner of all rights, title, and interest in the ‘604 patent, entitled
7 “Turbo Encoding/Decoding Device and Method for Processing Frame Data According to QOS,”
8 which was duly and properly issued by the United States Patent and Trademark Office (“USPTO”)
9 on August 9, 2005. A copy of the ‘604 patent is attached as Ex. 1.

10 48. SEC is the owner of all rights, title, and interest in the ‘410 patent, entitled
11 “Apparatus and Method for Controlling a Demultiplexer and a Multiplexer Used for Rate
12 Matching in a Mobile Communication System,” which was duly and properly issued by the
13 USPTO on May 23, 2006. A copy of the ‘410 patent is attached as Ex. 2.

14 49. SEC is the owner of all rights, title, and interest in the ‘055 patent, entitled
15 “Mobile Telephone Capable of Displaying World Time and Method for Controlling the Same,”
16 which was duly and properly issued by the USPTO on June 27, 2006. A copy of the ‘055 patent
17 is attached as Ex. 3.

18 50. SEC is the owner of all rights, title, and interest in the ‘871 patent, entitled
19 “Portable Telephone and Method of Displaying Data Thereof,” which was duly and properly
20 issued by the USPTO on July 18, 2006. A copy of the ‘871 patent is attached as Ex. 4.

21 51. SEC is the owner of all rights, title, and interest in the ‘792 patent, entitled
22 “Interleaving Apparatus and Method for Symbol Mapping in an HSDPA Mobile Communication
23 System,” which was duly and properly issued by the USPTO on April 3, 2007. A copy of the
24 ‘792 patent is attached as Ex. 5.

25 52. SEC is the owner of all rights, title, and interest in the ‘867 patent, entitled
26 “Apparatus and Method for Generating Scrambling Code in UMTS Mobile Communication
27 System,” which was duly and properly issued by the USPTO on April 22, 2008. A copy of the
28 ‘867 patent is attached as Ex. 6.

1 53. SEC is the owner of all rights, title, and interest in the ‘001 patent, entitled
2 “Apparatus and Method for Channel Coding and Multiplexing in CDMA Communication
3 System,” which was duly and properly issued by the USPTO on June 10, 2008. A copy of the
4 ‘001 patent is attached as Ex. 7.

5 54. SEC is the owner of all rights, title, and interest in the ‘516 patent, entitled
6 “Method and Apparatus for Data Transmission in a Mobile Telecommunication System
7 Supporting Enhanced Uplink Service,” which was duly and properly issued by the USPTO on
8 November 4, 2008. A copy of the ‘516 patent is attached as Ex. 8.

9 55. SEC is the owner of all rights, title, and interest in the ‘893 patent, entitled
10 “Method of Controlling Digital Image Processing Apparatus for Efficient Reproduction and
11 Digital Image Processing Apparatus Using the Method,” which was duly and properly issued by
12 the USPTO on November 25, 2008. A copy of the ‘893 patent is attached as Ex. 9.

13 56. SEC is the owner of all rights, title, and interest in the ‘460 patent, entitled
14 “Portable Composite Communication Terminal for Transmitting/Receiving and Images, and
15 Operation Method and Communication System Thereof,” which was duly and properly issued by
16 the USPTO on August 18, 2009. A copy of the ‘460 patent is attached as Ex. 10.

17 57. SEC is the owner of all rights, title, and interest in the ‘941 patent, entitled
18 “Method and Apparatus for Transmitting/Receiving Packet Data Using Pre-Defined Length
19 Indicator in a Mobile Communication System,” which was duly and properly issued by the
20 USPTO on March 9, 2010. A copy of the ‘941 patent is attached as Ex. 11.

21 58. SEC is the owner of all rights, title, and interest in the ‘711 patent, entitled
22 “Multi-Tasking Apparatus and Method in Portable Terminal,” which was duly and properly issued
23 by the USPTO on April 13, 2010. A copy of the ‘711 patent is attached as Ex. 12.

24 **APPLE’S ALLEGED CLAIMS AGAINST SAMSUNG**

25 59. Apple claims to own the ‘828, ‘002, ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790,
26 ‘D334, ‘D305, ‘D087, ‘D677, ‘D270 , and ‘D889 Patents, which purport to cover technologies and
27 designs relating to mobile electronics devices and tablet computers.

28

1 60. Apple claims to own the ‘983, ‘218, ‘327, ‘196, ‘642, ‘200, ‘685, ‘169, ‘197, and
2 ‘038 Registrations and the ‘463, ‘838, ‘829, ‘869, and ‘118 Applications, which purport to cover
3 marks and trade dress relating to mobile electronics devices and tablet computers.

4 61. Apple claims to own certain unregistered trade dress that Apple alleges is
5 embodied in Apple’s iPhone, iPhone 3G, iPhone 3GS, iPhone 4, iPod Touch, iPad and iPad 2
6 products.

7 62. Apple has accused the Samsung Counterclaimants of infringing the ‘828, ‘002,
8 ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790, ‘D334, ‘D305, ‘D087, ‘D677, ‘D270 , and ‘D889
9 Patents through the Samsung Counterclaimants’ alleged using, selling and/or offering to sell, in
10 the United States and/or importing into the United States one or more of the products known as the
11 Samsung Acclaim, Captivate, Continuum, Droid Charge, Exhibit 4G, Epic 4G, Fascinate, Gem,
12 Galaxy Ace, Galaxy Prevail, Galaxy S (i9000), Galaxy S 4G, Gravity, Indulge, Infuse 4G,
13 Intercept, Mesmerize, Nexus S, Nexus S 4G, Replenish, Showcase i500, Showcase Galaxy S,
14 Sidekick, Transform, and Vibrant phones, and the Galaxy Tab and Galaxy Tab 10.1 tablet
15 computers (collectively, the “Accused Products”).

16 63. Apple has accused the Samsung Counterclaimants of infringing the purported
17 marks that are allegedly the subject of the ‘983, ‘218, ‘327, ‘196, ‘642, ‘200, ‘685, ‘169, ‘197, and
18 ‘038 Registrations and the ‘463, ‘838, ‘829, ‘869, and ‘118 Applications through the Samsung
19 Counterclaimants’ alleged use of one or more of these registrations or applications in one or more
20 of the Accused Products.

21 64. Apple has accused the Samsung Counterclaimants of engaging in false designation
22 of origin and unfair competition by allegedly manufacturing and distributing one or more of the
23 Accused Products that Apple alleges “misappropriate[]” and “mimic” certain unregistered trade
24 dress that Apple alleges it owns and is embodied in Apple’s iPhone, iPhone 3G, iPhone 3GS,
25 iPhone 4, iPod Touch, iPad and iPad 2 products.

26 65. Apple has accused the Samsung Counterclaimants of diluting the Apple iPhone
27 Trade Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress,
28 and Apple iPad 2 Trade Dress by the Samsung Counterclaimants’ alleged manufacture and

1 distribution of one or more of the Accused Products that Apple alleges “misappropriate[]” and
2 “mimic” said trade dress.

3 66. Apple has accused the Samsung Counterclaimants of engaging in fraudulent and
4 unlawful business practices as defined by California Business & Professions Code § 17200 based
5 upon the same alleged acts underlying Apple’s accusations of patent, trademark and trade dress
6 infringement; false designation of origin; trade dress dilution; and unfair competition described
7 above in these Counterclaims.

8 67. Apple has accused the Samsung Counterclaimants of unjust enrichment based upon
9 the same alleged acts underlying Apple’s accusations of patent, trademark and trade dress
10 infringement; false designation of origin; trade dress dilution; and unfair competition described
11 above in these Counterclaims.

12 **FIRST CLAIM FOR RELIEF**

13 **(Infringement of the ‘604 Patent)**

14 68. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
15 allegations of Paragraphs 1-67 of these Counterclaims as though fully set forth herein.

16 69. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
17 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
18 ‘604 patent by making, using, selling, and/or offering to sell in the United States, or importing into
19 the United States, products or processes that practice the inventions claimed in the ‘604 patent,
20 including without limitation, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the
21 iPad 3G, and the iPad 2 3G.

22 70. As a result of Apple’s unlawful infringement of the ‘604 patent, the Samsung
23 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
24 Counterclaimants are entitled to recover from Apple the damages suffered by them as a result of
25 its unlawful acts.

26 71. On information and belief, Apple intends to continue its unlawful infringing
27 activity, and the Samsung Patent Counterclaimants continue to and will continue to suffer
28

1 irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing
2 activities unless this Court enjoins Apple from further infringing activities.

3 **SECOND CLAIM FOR RELIEF**

4 **(Infringement of the ‘410 Patent)**

5 72. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
6 allegations of Paragraphs 1-71 of these Counterclaims as though fully set forth herein.

7 73. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
8 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
9 ‘410 patent by making, using, selling, and/or offering to sell in the United States, or importing into
10 the United States, products or processes that practice the inventions claimed in the ‘410 patent,
11 including without limitation, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the
12 iPad 3G, and the iPad 2 3G.

13 74. As a result of Apple’s unlawful infringement of the ‘410 patent, the Samsung
14 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
15 Counterclaimants are entitled to recover from Apple the damages suffered by them as a result of
16 its unlawful acts.

17 75. On information and belief, Apple intends to continue its unlawful infringing
18 activity, and the Samsung Patent Counterclaimants continue to and will continue to suffer
19 irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing
20 activities unless this Court enjoins Apple from further infringing activities.

21 **THIRD CLAIM FOR RELIEF**

22 **(Infringement of the ‘055 Patent)**

23 76. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
24 allegations of Paragraphs 1-75 of these Counterclaims as though fully set forth herein.

25 77. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
26 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
27 ‘055 patent by making, using, selling, and/or offering to sell in the United States, or importing into
28 the United States, products or processes that practice the inventions claimed in the ‘055 patent,

1 including without limitation, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the
2 iPod Touch, the iPad, the iPad 3G, the iPad 2, and the iPad 2 3G.

3 78. As a result of Apple's unlawful infringement of the '055 patent, the Samsung
4 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
5 Counterclaimants are entitled to recover from Apple the damages suffered by them as a result of
6 its unlawful acts.

7 79. On information and belief, Apple intends to continue its unlawful infringing
8 activity, and the Samsung Patent Counterclaimants continue to and will continue to suffer
9 irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing
10 activities unless this Court enjoins Apple from further infringing activities.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Infringement of the '871 Patent)**

13 80. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
14 allegations of Paragraphs 1-79 of these Counterclaims as though fully set forth herein.

15 81. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
16 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
17 '871 patent by making, using, selling, and/or offering to sell in the United States, or importing into
18 the United States, products or processes that practice the inventions claimed in the '871 patent,
19 including without limitation, the Apple iPhone 3G, iPhone 3GS, iPhone 4, iPad, iPad 3G, iPad 2,
20 iPad 2 3G, and iPod Touch.

21 82. As a result of Apple's unlawful infringement of the '871 patent, the Samsung
22 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
23 Counterclaimants are entitled to recover from Apple the damages suffered by the them as a result
24 of its unlawful acts.

25 83. On information and belief, Apple intends to continue its unlawful infringing
26 activity, and Samsung continues to and will continue to suffer irreparable harm – for which there
27 is no adequate remedy at law – from such unlawful infringing activities unless this Court enjoins
28 Apple from further infringing activities.

1 **FIFTH CLAIM FOR RELIEF**

2 **(Infringement of the ‘792 Patent)**

3 84. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
4 allegations of Paragraphs 1-83 of these Counterclaims as though fully set forth herein.

5 85. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
6 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
7 ‘792 patent by making, using, selling, and/or offering to sell in the United States, or importing into
8 the United States, products or processes that practice the inventions claimed in the ‘792 patent,
9 including without limitation, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the
10 iPad 3G, and the iPad 2 3G.

11 86. As a result of Apple’s unlawful infringement of the ‘792 patent, the Samsung
12 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
13 Counterclaimants are entitled to recover from Apple the damages suffered by them as a result of
14 its unlawful acts.

15 87. On information and belief, Apple intends to continue its unlawful infringing
16 activity, and the Samsung Patent Counterclaimants continue to and will continue to suffer
17 irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing
18 activities unless this Court enjoins Apple from further infringing activities.

19 **SIXTH CLAIM FOR RELIEF**

20 **(Infringement of the ‘867 Patent)**

21 88. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
22 allegations of Paragraphs 1-87 of these Counterclaims as though fully set forth herein.

23 89. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
24 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
25 ‘867 patent by making, using, selling, and/or offering to sell in the United States, or importing into
26 the United States, products or processes that practice the inventions claimed in the ‘867 patent,
27 including without limitation, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the
28 iPad 3G, and the iPad 2 3G.

1 90. As a result of Apple’s unlawful infringement of the ‘867 patent, the Samsung
 2 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
 3 Counterclaimants are entitled to recover from Apple the damages suffered by them as a result of
 4 its unlawful acts.

5 91. On information and belief, Apple intends to continue its unlawful infringing
 6 activity, and Samsung continues to and will continue to suffer irreparable harm – for which there
 7 is no adequate remedy at law – from such unlawful infringing activities unless this Court enjoins
 8 Apple from further infringing activities.

9 **SEVENTH CLAIM FOR RELIEF**
 10 **(Infringement of the ‘001 Patent)**

11 92. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
 12 allegations of Paragraphs 1-91 of these Counterclaims as though fully set forth herein.

13 93. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
 14 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
 15 ‘001 patent by making, using, selling, and/or offering to sell in the United States, or importing into
 16 the United States, products or processes that practice the inventions claimed in the ‘001 patent,
 17 including without limitation, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the
 18 iPad 3G, and the iPad 2 3G.

19 94. As a result of Apple’s unlawful infringement of the ‘001 patent, the Samsung
 20 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
 21 Counterclaimants are entitled to recover from Apple the damages suffered by the them as a result
 22 of its unlawful acts.

23 95. On information and belief, Apple intends to continue its unlawful infringing
 24 activity, and the Samsung Patent Counterclaimants continue to and will continue to suffer
 25 irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing
 26 activities unless this Court enjoins Apple from further infringing activities.

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1 **EIGHTH CLAIM FOR RELIEF**

2 **(Infringement of the ‘516 Patent)**

3 96. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
4 allegations of Paragraphs 1-95 of these Counterclaims as though fully set forth herein.

5 97. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
6 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
7 ‘516 patent by making, using, selling, and/or offering to sell in the United States, or importing into
8 the United States, products or processes that practice the inventions claimed in the ‘516 patent,
9 including without limitation, the Apple iPhone 4 and the iPad 2 3G.

10 98. As a result of Apple’s unlawful infringement of the ‘516 patent, the Samsung
11 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
12 Counterclaimants are entitled to recover from Apple the damages suffered by them as a result of
13 its unlawful acts.

14 99. On information and belief, Apple intends to continue its unlawful infringing
15 activity, and the Samsung Patent Counterclaimants have suffered and will continue to suffer
16 irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing
17 activities unless this Court enjoins Apple from further infringing activities.

18 **NINTH CLAIM FOR RELIEF**

19 **(Infringement of the ‘893 Patent)**

20 100. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
21 allegations of Paragraphs 1-99 of these Counterclaims as though fully set forth herein.

22 101. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
23 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
24 ‘893 patent by making, using, selling, and/or offering to sell in the United States, or importing into
25 the United States, products or processes that practice the inventions claimed in the ‘893 patent,
26 including without limitation, the Apple iPhone 3G, iPhone 3GS, iPhone 4, iPad 2, iPad 2 3G, and
27 iPod Touch (4th Generation).

28

1 **ELEVENTH CLAIM FOR RELIEF**

2 **(Infringement of the '941 Patent)**

3 108. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
4 allegations of Paragraphs 1-107 of these Counterclaims as though fully set forth herein.

5 109. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
6 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
7 '941 patent by making, using, selling, and/or offering to sell in the United States, or importing into
8 the United States, products or processes that practice the inventions claimed in the '941 patent,
9 including without limitation, the Apple iPhone 3G, the Apple iPhone 3GS, the Apple iPhone 4, the
10 iPad 3G, and the iPad 2 3G.

11 110. As a result of Apple's unlawful infringement of the '941 patent, the Samsung
12 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
13 Counterclaimants are entitled to recover from Apple the damages suffered by them as a result of
14 its unlawful acts.

15 111. On information and belief, Apple intends to continue its unlawful infringing
16 activity, and the Samsung Patent Counterclaimants continue to and will continue to suffer
17 irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing
18 activities unless this Court enjoins Apple from further infringing activities.

19 **TWELFTH CLAIM FOR RELIEF**

20 **(Infringement of the '711 Patent)**

21 112. The Samsung Patent Counterclaimants re-allege and incorporate by reference the
22 allegations of Paragraphs 1-111 of these Counterclaims as though fully set forth herein.

23 113. Upon information and belief, in violation of 35 U.S.C. § 271, Apple is and has
24 been directly infringing, contributing to the infringement of, and/or inducing others to infringe the
25 '711 patent by making, using, selling, and/or offering to sell in the United States, or importing into
26 the United States, products or processes that practice the inventions claimed in the '711 patent,
27 including without limitation, the Apple iPhone 3G, iPhone 3GS, iPhone 4, iPad, iPad 3G, iPad 2,
28 iPad 2 3G, and iPod Touch.

1 114. As a result of Apple’s unlawful infringement of the ‘711 patent, the Samsung
2 Patent Counterclaimants have suffered and will continue to suffer damage. The Samsung Patent
3 Counterclaimants are entitled to recover from Apple the damages suffered by them as a result of
4 its unlawful acts.

5 115. On information and belief, Apple intends to continue its unlawful infringing
6 activity, and the Samsung Patent Counterclaimants continue to and will continue to suffer
7 irreparable harm – for which there is no adequate remedy at law – from such unlawful infringing
8 activities unless this Court enjoins Apple from further infringing activities.

9 **THIRTEENTH CLAIM FOR RELIEF**

10 **(Declaration of Non-infringement of the ‘828, ‘002, ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790,**
11 **‘D334, ‘D305, ‘D087, ‘D677, ‘D270, and ‘D889 Patents)**

12 116. The Samsung Counterclaimants restate and incorporate by reference each of the
13 allegations of paragraphs 1 through 115 of these Counterclaims as though fully set forth herein.

14 117. Apple claims to be the owner and assignee of all rights, title and interest in and
15 under the ‘828, ‘002, ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790, ‘D334, ‘D305, ‘D087, ‘D677,
16 ‘D270, and ‘D889 Patents.

17 118. Apple has accused the Samsung Counterclaimants of infringement of the Patents in
18 Suit and has created a substantial, immediate and real controversy between the parties as to the
19 non-infringement of the ‘828, ‘002, ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790, ‘D334, ‘D305,
20 ‘D087, ‘D677, ‘D270 , and ‘D889 Patents.

21 119. The Samsung Counterclaimants do not infringe and have not infringed the ‘828,
22 ‘002, ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790, ‘D334, ‘D305, ‘D087, ‘D677, ‘D270, and ‘D889
23 Patents, through their marking, using, selling and/or offering to sell, in the United States and/or
24 importing into the United States, one or more of the Accused Products.

25 **FOURTEENTH CLAIM FOR RELIEF**

26 **(Declaration of Invalidity of the ‘828, ‘002, ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790, ‘D334,**
27 **‘D305, ‘D087, ‘D677, ‘D270, and ‘D889 Patents)**

28 120. The Samsung Counterclaimants restate and incorporate by reference each of the
allegations of paragraphs 1 through 119 of these Counterclaims as though fully set forth herein.

1 121. Apple contends that the ‘828, ‘002, ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790,
2 ‘D334, ‘D305, ‘D087, ‘D677, ‘D270, and ‘D889 Patents are valid and has created a substantial,
3 immediate and real controversy between the parties as to the invalidity of the these patents.

4 122. Each and every claim of the ‘828, ‘002, ‘381, ‘915, ‘891, ‘607, ‘163, ‘129, ‘D790,
5 ‘D334, ‘D305, ‘D087, ‘D677, ‘D270, and ‘D889 Patents are invalid for failing to satisfy one or
6 more of the conditions for patentability specified in Title 35 of the United States Code, including
7 without limitation, Sections 101, 102, 103, 112 and/or 171, and Apple is entitled to no relief for
8 any claim relating to their alleged validity.

9 **FIFTEENTH CLAIM FOR RELIEF**

10 **(Declaration of No Federal False Designation of Origin Under 15 U.S.C. § 1125(a))**

11 123. The Samsung Counterclaimants restate and incorporate by reference each of the
12 allegations of paragraphs 1 through 122 of these Counterclaims as though fully set forth herein.

13 124. Apple has accused the line of Galaxy phones and tablet computers of
14 “misappropriating” or “mimicking” the claimed Apple iPhone Trade Dress, Apple iPhone 3G
15 Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress
16 and has created a substantial, immediate and real controversy between the parties as to the absence
17 of any false designation of origin and the absence of unfair competition by the Samsung
18 Counterclaimants through their line of Galaxy phones and tablet computers.

19 125. Apple’s claimed Apple iPhone Trade Dress, Apple iPhone 3G Trade Dress, Apple
20 iPhone 4 Trade Dress, Apple iPad Trade Dress, and Apple iPad 2 Trade Dress are functional, are
21 common to consumer electronic products, are generic and otherwise are not distinctive or
22 protectable.

23 126. The appearance of the Samsung Counterclaimants’ line of Galaxy phones and
24 tablet computers and their packaging also are not likely to cause confusion, cause mistake, or
25 deceive consumers as to the affiliation, connection, or association of the Samsung
26 Counterclaimants’ line of Galaxy phones and tablet computers, or as to the origin, sponsorship, or
27 approval by Apple of the Samsung Counterclaimants’ goods, services, or commercial activities.

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1 127. Apple has not been harmed by or suffered any cognizable injury from any alleged
2 conduct by the Samsung Counterclaimants.

3 128. The Samsung Counterclaimants are entitled to a declaration that they are not liable
4 to Apple on account of false designation of origin or unfair competition by their line of Galaxy
5 phones and tablet computers.

6 **SIXTEENTH CLAIM FOR RELIEF**

7 **(Declaration of Noninfringement of Trademark or Trade Dress)**

8 129. The Samsung Counterclaimants restate and incorporate by reference each of the
9 allegations of paragraphs 1 through 128 of these Counterclaims as though fully set forth herein.

10 130. Apple has accused SEC and STA's line of Galaxy phones of infringing the '983,
11 '218, '327 Registrations, the '463 Application, and the unregistered "Apple Packaging," and has
12 created a substantial, immediate and real controversy between the parties as to the
13 noninfringement of these registrations and this application by SEC and STA's line of Galaxy
14 phones.

15 131. Apple has also accused the Samsung Counterclaimants' line of Galaxy phones and
16 tablet computers of infringing the '196, '642, '200, '685, '169, '197, and '038 Registrations and
17 has created a substantial, immediate and real controversy between the parties as to the
18 noninfringement of these registrations by the Samsung Counterclaimants' line of Galaxy phones
19 and tablet computers.

20 132. Each of the alleged marks and trade dress that are the subject of the '983, '218,
21 '327, '196, '642, '200, '685, '169, '197, and '038 Registrations, the '463 Application, and the
22 unregistered "Apple packaging" are functional, are common to consumer electronic products, are
23 generic and otherwise are not distinctive or protectable.

24 133. The appearance of the Samsung Counterclaimants' line of Galaxy phones and
25 tablet computers and their packaging are not likely to cause confusion, or to cause mistake, or to
26 deceive consumers as to the affiliation, connection, or association of the Samsung
27 Counterclaimants' line of Galaxy phones and tablet computers, or as to the origin, sponsorship, or
28 approval by Apple of the Samsung Counterclaimants' goods, services, or commercial activities.

1 134. Apple has not been harmed by or suffered any cognizable injury from any alleged
2 conduct by the Samsung Counterclaimants.

3 135. The Samsung Counterclaimants are entitled to a declaration that they are not liable
4 to Apple on account of a violation of any alleged trademark or trade dress infringement.

5 **SEVENTEENTH CLAIM FOR RELIEF**

6 **(Declaration of Non-Dilution)**

7 136. The Samsung Counterclaimants restate and incorporate by reference each of the
8 allegations of paragraphs 1 through 135 of these Counterclaims as though fully set forth herein.

9 137. Apple claims that the Samsung Counterclaimants' manufacture and distribution of
10 one or more of the Accused Products constitutes trade dress dilution of the Apple iPhone Trade
11 Dress, Apple iPhone 3G Trade Dress, Apple iPhone 4 Trade Dress, Apple iPad Trade Dress, and
12 Apple iPad 2 Trade Dress under section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

13 138. None of Apple's alleged trade dresses is, or ever has been, "distinctive" or
14 "famous" within the meaning of 15 U.S.C. § 1125(c).

15 139. Each of Apple's claimed trade dresses is functional, common to consumer
16 electronic products, generic and otherwise not distinctive or protectable.

17 140. The Samsung Counterclaimants' activities are not likely to cause dilution of
18 Apple's claimed trade dresses.

19 141. Apple has not been harmed by or suffered any cognizable injury from any alleged
20 conduct by the Samsung Counterclaimants.

21 142. The Samsung Counterclaimants are entitled to a declaration that they are not liable
22 to Apple for trade dress dilution under 15 U.S.C. § 1125(c).

23 **EIGHTEENTH CLAIM FOR RELIEF**

24 **(Declaration of Invalidity of the '983, '218, '327, '196, '642, '200, '685, '169, '197, and '038**
25 **Registrations and the '463, '838, '829, '869, and '118 Applications)**

26 143. The Samsung Counterclaimants restate and incorporate by reference each of the
27 allegations of paragraphs 1 through 142 of these Counterclaims as though fully set forth herein.

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1 144. Apple has accused the Samsung Counterclaimants' line of Galaxy phones and
2 tablet computers of infringing the '983, '218, '327, '196, '642, '200, '685, '169, '197, and '038
3 Registrations and the '463, '838, '829, '869, and '118 Applications and has thus created a
4 substantial, immediate and real controversy between the parties as to the invalidity of these
5 registrations and applications.

6 145. Each of the alleged marks and trade dress that is the subject of the '983, '218, '327,
7 '196, '642, '200, '685, '169, '197, and '038 Registrations and the '463, '838, '829, '869, and '118
8 Applications is functional, is common to consumer electronic products, is generic and otherwise is
9 not distinctive or protectable.

10 146. The Samsung Counterclaimants are entitled to a declaration that each of the '983,
11 '218, '327, '196, '642, '200, '685, '169, '197, and '038 Registrations and the '463, '838, '829,
12 '869, and '118 Applications is invalid.

13 **NINETEENTH CLAIM FOR RELIEF**

14 **(Cancellation of the '983, '218, '327, '196, '642, '200, '685, '169, '197, and '038 Registrations)**

15 **(15 U.S.C. §§ 1119 and 1064)**

16 147. The Samsung Counterclaimants restate and incorporate by reference each of the
17 allegations of paragraphs 1 through 146 of these Counterclaims as though fully set forth herein.

18 148. Apple has accused the Samsung Counterclaimants' line of Galaxy phones and
19 tablet computers of infringing the '983, '218, '327, '196, '642, '200, '685, '169, '197, and '038
20 Registrations and has thus created a substantial, immediate and real controversy between the
21 parties as to the invalidity of these registrations.

22 149. Each of the alleged marks and trade dress that is the subject of the '983, '218, '327,
23 '196, '642, '200, '685, '169, '197, and '038 Registrations is functional, is common to consumer
24 electronic products, is generic and otherwise is not distinctive or protectable.

25 150. The Samsung Counterclaimants are entitled to an order cancelling in its entirety
26 each of the '983, '218, '327, '196, '642, '200, '685, '169, '197, and '038 Registrations.

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1 **TWENTIETH CLAIM FOR RELIEF**

2 **(Declaration of Nonviolation of California Business and Professions Code §17200, et seq.)**

3 151. The Samsung Counterclaimants restate and incorporate by reference each of the
4 allegations of paragraphs 1 through 150 of these Counterclaims as though fully set forth herein.

5 152. Apple claims that the Samsung Counterclaimants' use of allegedly infringing trade
6 dress in one or more of the Accused Products is likely to cause others to be confused or mistaken
7 into believing that there is a relationship between the Samsung Counterclaimants and Apple or
8 that the Samsung Counterclaimants' products are affiliated with or sponsored by Apple, and that
9 this alleged use is likely to mislead or deceive the general public and therefore constitutes
10 fraudulent business practices in violation of California Business & Professions Code § 17200, *et*
11 *seq.*

12 153. Apple also claims that the Samsung Counterclaimants have engaged in unfair
13 competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), trade dress dilution in
14 violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), trademark and trade dress
15 infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114, and patent infringement
16 under 35 U.S.C. § 271, and that these alleged violations are therefore unlawful acts in violation of
17 California Business & Professions Code § 17200, *et seq.*

18 154. None of the Accused Products infringes any of the Patents In Suit, the Registrations
19 In Suit, or Apple's claimed unregistered trade dress. Nor do any of the Accused Products dilute
20 any of Apple's claimed trade dress. Nor do any of the Accused Products employ a false
21 designation of origin or amount to unfair competition on the part of the Samsung
22 Counterclaimants. Nor are any of the Accused Products likely to cause confusion, or to cause
23 mistake, or to deceive consumers as to the affiliation, connection, or association of the Samsung
24 Counterclaimants' line of Galaxy phones and tablet computers, or as to the origin, sponsorship, or
25 approval by Apple of the Samsung Counterclaimants' goods, services, or commercial activities.

26 155. Apple has not been harmed by or suffered any cognizable injury from any alleged
27 conduct by the Samsung Counterclaimants.

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1 156. The Samsung Counterclaimants are entitled to a declaration that they are not liable
2 to Apple under California Business & Professions Code § 17200, *et seq.*

3 **TWENTY-FIRST CLAIM FOR RELIEF**

4 **(Declaration of Nonviolation of the Law of Unjust Enrichment)**

5 157. The Samsung Counterclaimants restate and incorporate by reference each of the
6 allegations of paragraphs 1 through 156 of these Counterclaims as though fully set forth herein.

7 158. Apple claims that the Samsung Counterclaimants have been unjustly enriched to
8 Apple’s detriment.

9 159. As described above, the Samsung Counterclaimants have engaged in no wrongful,
10 unjust, or unlawful activities.

11 160. It would not be inequitable for the Samsung Counterclaimants to retain the benefits
12 received from their lawful activities.

13 161. Apple has not been harmed or suffered any cognizable injury from any alleged
14 conduct by the Samsung Counterclaimants.

15 162. The Samsung Counterclaimants are entitled to a declaration that they are not liable
16 to Apple for violation of the law of unjust enrichment.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the Samsung Patent Counterclaimants respectfully request entry of
19 judgment as follows:

20 A. That Apple be declared to have infringed, induced others to infringe and/or committed
21 acts of contributory infringement with respect to the claims of Samsung’s Patents In Suit as
22 alleged above;

23 B. That Apple and its officers, agents, servants, employees, and all those persons acting or
24 attempting to act in active concert or in participation with them or acting on their behalf be
25 immediately, preliminarily and permanently enjoined from further infringement of Samsung’s
26 Patents In Suit;

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1 C. That Apple be ordered to account for and pay to the Samsung Patent Counterclaimants
2 all damages caused to them by reason of Apple's infringement of Samsung's Patents In Suit
3 pursuant to 35 U.S.C. § 284;

4 D. That Apple be ordered to pay treble damages for willful infringement of each of
5 Samsung's Patents In Suit pursuant to 35 U.S.C. § 284;

6 E. That this case be declared "exceptional" under 35 U.S.C. § 285 and that the Samsung
7 Patent Counterclaimants be awarded their attorneys' fees, expenses, and costs incurred in this
8 action; and

9 F. That the Samsung Patent Counterclaimants be granted pre-judgment and post-judgment
10 interest on the damages caused to them by reason of Apple's infringement of Samsung's Patents
11 In Suit.

12 WHEREFORE, the Samsung Defendants/Samsung Counterclaimants respectfully request
13 entry of judgment as follows:

14 G. That the Court dismiss with prejudice any and all claims of Apple's Complaint and
15 order that Apple take nothing as a result of the Complaint and that all of Apple's prayers for relief
16 are denied;

17 H. That the Court find and declare, and enter judgment, in favor of the Samsung
18 Defendants/Samsung Counterclaimants and against Apple that the Samsung Defendants/Samsung
19 Counterclaimants have not infringed any of the Apple Patents In Suit;

20 I. That the Court find and declare, and enter judgment, in favor of the Samsung
21 Defendants/Samsung Counterclaimants and against Apple that each of the Apple Patents In Suit is
22 invalid;

23 J. That the Court find and declare, and enter judgment, in favor of the Samsung
24 Defendants/Samsung Counterclaimants and against Apple that the Samsung Defendants/Samsung
25 Counterclaimants have not engaged in any federal false designation of origin or unfair competition
26 under 15 U.S.C. § 1125(a);

27 K. That the Court find and declare, and enter judgment, in favor of the Samsung
28 Defendants/Samsung Counterclaimants and against Apple that the Samsung Defendants/Samsung

1 Counterclaimants have not infringed any alleged trademark or alleged trade dress asserted by
2 Apple in its Complaint;

3 L. That the Court find and declare, and enter judgment, in favor of the Samsung
4 Defendants/Samsung Counterclaimants and against Apple that the Samsung Defendants/Samsung
5 Counterclaimants have not violated the trade dress dilution provisions of the Lanham Act with
6 respect to Apple's iPhone, iPod and iPad products;

7 M. That the Court find and declare, and enter an order cancelling in its entirety each of the
8 '983, '218, '327, '196, '642, '200, '685, '169, '197, and '038 Registrations and to certify such
9 cancellations to the Director of the USPTO, for appropriate entry upon the records of the USPTO;

10 N. That the Court find and declare, and enter judgment, in favor of the Samsung
11 Defendants/Samsung Counterclaimants and against Apple that the Samsung Defendants/Samsung
12 Counterclaimants have not violated California Business and Professions Code §17200, *et seq.*;

13 O. That the Court find and declare, and enter judgment, in favor of the Samsung
14 Defendants/Samsung Counterclaimants and against Apple that the Samsung Defendants/Samsung
15 Counterclaimants have not been unjustly enriched;

16 P. That the Court award the Samsung Defendants/Samsung Counterclaimants attorney's
17 fees and costs of suit under the Lanham Act as an exceptional case;

18 Q. That Apple be ordered to pay all costs associated with this action; and

19 R. That the Court grant to the Samsung Defendants/Samsung Counterclaimants such other
20 and further relief as may be deemed just and appropriate.

21 **DEMAND FOR JURY TRIAL**

22 SEC, SEA and STA hereby demand a jury trial on all issues.
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DATED: June 30, 2011

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