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16 CO., LTD., SAMSUNG ELECTRONICS
AMERICA, INC. and SAMSUNG
17 TELECOMMUNICATIONS AMERICA, LLC

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

20 APPLE INC., a California corporation,
21 Plaintiff and Counterclaim Defendant,

22 vs.

23 SAMSUNG ELECTRONICS CO., LTD., a
24 Korean corporation; SAMSUNG
ELECTRONICS AMERICA, INC., a New York
25 corporation; SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC, a
26 Delaware limited liability company,

27 Defendants and Counterclaimants.

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CASE NO. 12-CV-00630-LHK

**SAMSUNG'S ANSWER AND
AFFIRMATIVE DEFENSES TO APPLE
INC.'S FIRST AMENDED
COUNTERCLAIMS IN REPLY;**

DEMAND FOR JURY TRIAL

1 **I. ANSWER TO AMENDED COUNTERCLAIMS IN REPLY**

2 Defendants Samsung Electronics Co., Ltd. (“SEC”), Samsung Electronics America, Inc.
3 (“SEA”), and Samsung Telecommunications America, LLC (“STA”) (collectively, “Samsung”) by
4 and through their undersigned counsel, in response to the First Amended Counterclaims in Reply
5 of Apple Inc. (“Apple”), filed August 31, 2012 (D.I. 262) deny Apple’s allegations of breach of
6 contract, violation of the Sherman Act, unfair competition, and inequitable conduct, and answer as
7 follows:

8 **RESPONSE TO INTRODUCTORY STATEMENT**

9 1. Samsung admits that Apple’s pleading is styled as a responsive pleading under Fed.
10 R. Civ. P. 12, but denies the defenses and counterclaims set forth therein.

11 2. Samsung admits that Apple has responded to Samsung’s Counterclaims, but denies
12 that Apple’s overview is accurate or appropriate.

13 3. Denied.

14 4. Samsung lacks knowledge sufficient to form a belief as to whether the Universal
15 Telecommunications Standard (“UMTS”) is the world’s most widely adopted telecommunications
16 standard and therefore denies the same. Samsung admits that the European Telecommunications
17 Standards Institute (“ETSI”) promulgated UMTS. Samsung admits that Samsung has identified
18 the patent application that issued as the ’087 Patent as IPR that is, or is likely to become, essential
19 IPR in relation to an ETSI standard, and notified ETSI that Samsung is prepared to grant
20 irrevocable licenses to that patent on terms and conditions which are in accordance with Clause
21 6.1 of the ETSI IPR Policy, in respect of the standard, to the extent that it remains essential to that
22 standard. Samsung admits that Samsung has identified the ’596 Patent as a patent that may be or
23 may become essential in relation to at least one ETSI standard, and notified ETSI that Samsung is
24 prepared to grant irrevocable licenses to that patent on terms and conditions which are in
25 accordance with Clause 6.1 of the ETSI IPR Policy, to the extent that it is or becomes and remains
26 essential in respect of that standard. Samsung admits that Samsung provided a written
27 declaration to ETSI that, with respect to the W-CDMA technology being elaborated by ETSI as a
28 standard for UMTS, Samsung is prepared to grant licenses to its essential IPRs on a fair,

1 reasonable, and non-discriminatory basis in accordance with the terms and conditions set forth in
2 Clause 6.1 of the ETSI IPR Policy. Except as expressly admitted, Samsung denies the remaining
3 allegations of Paragraph 4.

4 **RESPONSE TO AMENDED COUNTERCLAIMS IN REPLY**

5 **NATURE OF THE ACTION**

6 1. Denied.

7 2. Samsung admits that Apple and Samsung discussed Apple's allegations of patent
8 infringement in late summer 2010. Samsung admits that Samsung informed Apple of Apple's
9 infringement of Samsung's patents during those discussions. Except as expressly admitted,
10 Samsung denies all other allegations set forth in Paragraph 2.

11 3. Samsung admits that Apple sued Samsung in this Court, bringing claims that
12 included claims styled as patent, trade dress, and trademark infringement, in an action captioned as
13 *Apple Inc. v. Samsung Electronics Co., Ltd., et al.*, Case No. 11-cv-01846-LHK. Samsung
14 admits that Samsung counterclaimed against Apple for infringement of certain Samsung patents.
15 Samsung admits that Apple filed counterclaims in reply asserting claims including claims styled as
16 breach of contract, promissory estoppel, violation of Section 2 of the Sherman Act, and unfair
17 competition. Except as expressly admitted, Samsung denies all other allegations set forth in
18 Paragraph 3.

19 4. Samsung admits that it filed counterclaims against Apple in this action for
20 infringement of certain Samsung patents. Except as expressly admitted, Samsung denies all
21 other allegations set forth in Paragraph 4.

22 5. Samsung admits that Samsung entities have sued Apple for patent infringement in
23 at least eight jurisdictions outside the United States. Samsung admits that the European
24 Commission opened an investigation regarding EU competition laws, but denies that Samsung's
25 conduct violates any competition laws. Except as expressly admitted, Samsung denies all other
26 allegations set forth in Paragraph 5.

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1 Samsung's declared-essential patents. Samsung lacks knowledge sufficient to form a belief
2 about the remaining allegations of Paragraph 18 and therefore denies them.

3 19. Samsung lacks knowledge sufficient to form a belief about the allegations of
4 Paragraph 19 and therefore denies them.

5 20. Samsung admits that by summer 2010, it was aware that the iPhone baseband
6 chipsets and iPad baseband chipsets were used to enable wireless communication using the UMTS
7 standard. Samsung admits that it sells components for the iPhone and iPad to Apple. Samsung
8 admits that by Summer 2010, it informed Apple that Apple infringed certain patents owned by
9 Samsung. Except as expressly admitted, Samsung denies the remaining allegations of Paragraph
10 20.

11 21. Samsung admits that it notified Apple of Apple's infringement of Samsung patents
12 during patent licensing discussions between Apple and Samsung. Except as expressly admitted,
13 Samsung denies the remaining allegations of Paragraph 21.

14 22. Denied.

15 23. Admitted.

16 24. Denied.

17 25. Admitted.

18 26. Denied.

19 27. Denied.

20 28. Denied.

21 **STANDARDS IN THE WIRELESS COMMUNICATIONS INDUSTRY**

22 29. Samsung admits that Apple and Samsung sell handsets that include a computer
23 chipset that can communicate with cellular networks. Except as expressly admitted, Samsung
24 lacks knowledge sufficient to form a belief about the remaining allegations of Paragraph 29 and
25 therefore denies them.

26 30. Samsung lacks knowledge sufficient to form a belief about the allegations of
27 Paragraph 30 and therefore denies them.

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1 31. Samsung lacks knowledge sufficient to form a belief about the allegations of
2 Paragraph 31 and therefore denies them.

3 32. Samsung lacks knowledge sufficient to form a belief about the allegations of
4 Paragraph 32 and therefore denies them.

5 33. SEA and STA were not parties to *Samsung Elec. Co. v. InterDigital Commc'ns*
6 *Corp.*, No. 07-0167 (D. Del.), and on that basis Samsung denies that “Samsung” made the quoted
7 statement. Samsung lacks knowledge sufficient to form a belief about the remaining allegations
8 of Paragraph 33 and therefore denies them.

9 34. Samsung lacks knowledge sufficient to form a belief about the allegations of
10 Paragraph 34 and therefore denies them.

11 35. Samsung admits that the following statement appears on page 87 of the July 8,
12 2008 Hearing Transcript of *Certain 3G Wideband Code Division Multiple Access (WCDMA)*
13 *Mobile Handsets and Components Thereof*, Inv. No. 337-TA-601: “FRAND is a construct, a
14 concept that comes out of standard setting bodies because the whole point of a standard setting
15 body is to create a standard that everyone can follow without fear of lawsuits that are going to stop
16 the standard.” Except as expressly admitted, Samsung lacks knowledge sufficient to form a
17 belief about the remaining allegations of Paragraph 35 and therefore denies them.

18 36. Samsung lacks knowledge sufficient to form a belief about the allegations of
19 Paragraph 36 and therefore denies them.

20 37. Denied.

21 38. SEA and STA were not parties to *Samsung Elec. Co. v. InterDigital Commc'ns*
22 *Corp.*, No. 07-0167 (D. Del.), and on that basis Samsung denies that “Samsung” made the quoted
23 statements. Samsung lacks knowledge sufficient to form a belief about the remaining allegations
24 of Paragraph 38 and therefore denies them.

25 39. Samsung denies that it has breached any FRAND commitments. Samsung lacks
26 knowledge sufficient to form a belief about the remaining allegations of Paragraph 39 and
27 therefore denies them.

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1 **THE EVOLUTION OF MOBILE WIRELESS TELECOMMUNICATIONS STANDARDS**

2 40. Samsung lacks knowledge sufficient to form a belief about the allegations of
3 Paragraph 40 and therefore denies them.

4 41. Samsung lacks knowledge sufficient to form a belief about the allegations of
5 Paragraph 41 and therefore denies them.

6 42. Samsung lacks knowledge sufficient to form a belief about the allegations of
7 Paragraph 42 and therefore denies them.

8 43. Samsung admits that some carriers have introduced Long Term Evolution for
9 Global Systems for Mobile Communication based networks. Except as expressly admitted,
10 Samsung lacks knowledge sufficient to form a belief about the remaining allegations of Paragraph
11 43 and therefore denies them.

12 44. Samsung lacks knowledge sufficient to form a belief about the allegations of
13 Paragraph 44 and therefore denies them.

14 45. Samsung admits that ETSI is a non-profit standards-setting organization, and is
15 headquartered in France. Samsung lacks knowledge sufficient to form a belief about the
16 remaining allegations of Paragraph 45 and therefore denies them.

17 46. Samsung admits that some carriers have adopted GPRS and EDGE technology.
18 Except as expressly admitted, Samsung lacks knowledge sufficient to form a belief about the
19 allegations of Paragraph 46 and therefore denies them.

20 47. Samsung admits that UMTS employs WCDMA and is referred to as third
21 generation technology. Except as expressly admitted, Samsung lacks knowledge sufficient to
22 form a belief about the allegations of Paragraph 47 and therefore denies them.

23 48. Samsung admits that 3GPP is a collaboration of six SSOs from around the world,
24 including ETSI, the Telecommunications Technology Association (“TTA”), the Association of
25 Radio Industries and Businesses (“ARIB”), the Alliance for Telecommunications Industry
26 Solutions (“ATIS”), the China Communications Standards Association (“CCSA”), and the
27 Telecommunication Technology Committee (“TTC”). Samsung admits that UMTS and LTE are
28 standards developed by 3GPP. Except as expressly admitted, Samsung lacks knowledge

1 sufficient to form a belief about the remaining allegations of Paragraph 48 and therefore denies
2 them.

3 49. Samsung lacks knowledge sufficient to form a belief about the allegations of
4 Paragraph 49 and therefore denies them.

5 **APPLE'S ALLEGATIONS REGARDING NON-DISCLOSURE OF AND FALSE**
6 **COMMITMENTS CONCERNING ESSENTIAL INTELLECTUAL PROPERTY**

7 50. Denied.

8 51. Samsung admits that it was and is a member of ETSI and agreed to comply with
9 the ETSI IPR Policy. Except as expressly admitted, Samsung lacks knowledge sufficient to form
10 a belief about the remaining allegations of Paragraph 51 and therefore denies them.

11 52. Denied.

12 53. Samsung admits that, on or about December 14, 1998, Samsung provided a written
13 declaration to ETSI that, with respect to the W-CDMA technology being elaborated by ETSI as a
14 standard for UMTS, Samsung is prepared to grant licenses to its essential IPRs on a fair,
15 reasonable, and non-discriminatory basis in accordance with the terms and conditions set forth in
16 Clause 6.1 of the ETSI IPR Policy. Except as expressly admitted, Samsung denies the remaining
17 allegations of Paragraph 51.

18 54. Denied.

19 55. Denied.

20 56. Samsung admits that ETSI promulgated an IPR policy, set forth in Annex 6 of its
21 Rules of Procedure. Except as expressly admitted, Samsung lacks knowledge sufficient to form
22 a belief about the remaining allegations of Paragraph 56 and therefore denies them.

23 57. Samsung admits that Clause 4 of the ETSI IPR Policy dated April 8, 2009 states:

24 4.1 Subject to Clause 4.2 below, each MEMBER shall use its reasonable
25 endeavours, in particular during the development of a STANDARD or
26 TECHNICAL SPECIFICATION where it participates, to inform ETSI of
27 ESSENTIAL IPRs in a timely fashion. In particular, a MEMBER submitting a
28 technical proposal for a STANDARD or TECHNICAL SPECIFICATION shall, on
a bona fide basis, draw the attention of ETSI to any of that MEMBER's IPR which
might be ESSENTIAL if that proposal is adopted.

1 4.2 The obligations pursuant to Clause 4.1 above do however not imply any
2 obligation on MEMBERS to conduct IPR searches.

3 4.3 The obligations pursuant to Clause 4.1 above are deemed to be fulfilled in
4 respect of all existing and future members of a PATENT FAMILY if ETSI has
5 been informed of a member of this PATENT FAMILY in a timely fashion.
6 Information on other members of this PATENT FAMILY, if any, may be
7 voluntarily provided.

8 Samsung admits that definition 7 of the ETSI IPR Policy, dated April 8, 2009, states:

9 “IPR” shall mean any intellectual property right conferred by statute law including
10 applications therefor other than trademarks. For the avoidance of doubt rights
11 relating to get-up, confidential information, trade secrets or the like are excluded
12 from the definition of IPR.

13 Except as expressly admitted, Samsung denies the remaining allegations of Paragraph 57.

14 58. Samsung admits that the quotation from Clause 6.1 of the April 8, 2009 ETSI IPR
15 Policy is set forth accurately in Paragraph 58. Except as expressly admitted, Samsung denies the
16 remaining allegations of Paragraph 58.

17 59. Samsung admits that Section 8 of the April 8, 2009 ETSI IPR policy states:

18 8 Non-availability of Licences

19 8.1 Non-availability of licences prior to the publication of a STANDARD or a
20 TECHNICAL SPECIFICATION

21 8.1.1 Existence of a viable alternative technology

22 Where prior to the publication of a STANDARD or a TECHNICAL
23 SPECIFICATION an IPR owner informs ETSI that it is not prepared to
24 license an IPR in respect of a STANDARD or TECHNICAL
25 SPECIFICATION in accordance with Clause 6.1 above, the General
26 Assembly shall review the requirement for that STANDARD or
27 TECHNICAL SPECIFICATION and satisfy itself that a viable alternative
28 technology is available for the STANDARD or TECHNICAL
SPECIFICATION which:

- is not blocked by that IPR; and
- satisfies ETSI's requirements.

8.1.2 Non-existence of a viable alternative technology

Where, in the opinion of the General Assembly, no such viable alternative
technology exists, work on the STANDARD or TECHNICAL
SPECIFICATION shall cease, and the Director-General of ETSI shall
observe the following procedure:

- a) If the IPR owner is a MEMBER,

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- i) the Director-General of ETSI shall request that MEMBER to reconsider its position.
 - ii) If that MEMBER however decides not to withdraw its refusal to license the IPR, it shall then inform the Director-General of ETSI of its decision and provide a written explanation of its reasons for refusing to license that IPR, within three months of its receipt of the Director-General's request.
 - iii) The Director-General of ETSI shall then send the MEMBER's explanation together with relevant extracts from the minutes of the General Assembly to the ETSI Counsellors for their consideration.
- b) If the IPR owner is a third party,
- i) the Director-General of ETSI shall, wherever appropriate, request full supporting details from any MEMBER who has complained that licences are not available in accordance with Clause 6.1 above and/or request appropriate MEMBERS to use their good offices to find a solution to the problem.
 - ii) Where this does not lead to a solution the Director-General of ETSI shall write to the IPR owner concerned for an explanation and request ultimately that licences be granted according to Clause 6.1 above.
 - iii) Where the IPR owner refuses the Director-General's request and decides not to withdraw its refusal to license the IPR or does not answer the letter within three months after the receipt of the Director-General's request, the Director-General shall then send the IPR owner's explanation, if any, together with relevant extracts from the minutes of the General Assembly to the ETSI Counsellors for their consideration.

8.1.3 Prior to any decision by the General Assembly, the COMMITTEE should in consultation with the ETSI Secretariat use their judgment as to whether or not the COMMITTEE should pursue development of the concerned parts of the STANDARD or a TECHNICAL SPECIFICATION based on the non-available technology and should look for alternative solutions.

8.2 Non-availability of licences after the publication of a STANDARD or a TECHNICAL SPECIFICATION

Where, in respect of a published STANDARD or TECHNICAL SPECIFICATION, ETSI becomes aware that licences are not available from an IPR owner in accordance with Clause 6.1 above, that STANDARD or TECHNICAL SPECIFICATION shall be referred to the Director-General of ETSI for further consideration in accordance with the following procedure:

- 1 i) The Director-General shall request full supporting details from any
2 MEMBER or third party who has complained that licences are not
3 available in accordance with Clause 6.1 above.
- 4 ii) The Director-General shall write to the IPR owner concerned for an
5 explanation and request that licences be granted according to Clause
6 6.1 above. Where the concerned IPR owner is a MEMBER, it shall
7 inform the Director-General of ETSI of its decision and provide a
8 written explanation of its reasons in case of continuing refusal to
9 license that IPR.
- 10 iii) Where the IPR owner refuses the Director-General's request or does
11 not answer the letter within three months, the Director-General shall
12 inform the General Assembly and, if available, provide the General
13 Assembly with the IPR owner's explanation for consideration. A
14 vote shall be taken in the General Assembly on an individual
15 weighted basis to immediately refer the STANDARD or
16 TECHNICAL SPECIFICATION to the relevant COMMITTEE to
17 modify it so that the IPR is no longer ESSENTIAL.
- 18 iv) Where the vote in the General Assembly does not succeed, then the
19 General Assembly shall, where appropriate, consult the ETSI
20 Counsellors with a view to finding a solution to the problem. In
21 parallel, the General Assembly may request appropriate MEMBERS
22 to use their good offices to find a solution to the problem.
- 23 v) Where (iv) does not lead to a solution, then the General Assembly
24 shall request the European Commission to see what further action
25 may be appropriate, including nonrecognition of the STANDARD
26 or TECHNICAL SPECIFICATION in question.

27 In carrying out the foregoing procedure due account shall be taken of the
28 interest of the enterprises that have invested in the implementation of the
29 STANDARD or TECHNICAL SPECIFICATION in question.

30 Except as expressly admitted, Samsung denies the remaining allegations of Paragraph 59.

31 60. Samsung admits that Clause 3 of the April 8, 2009 ETSI IPR Policy is titled
32 “Policy Objectives,” and states:

- 33 3.1 It is ETSI's objective to create STANDARDS and TECHNICAL
34 SPECIFICATIONS that are based on solutions which best meet the
35 technical objectives of the European telecommunications sector, as defined
36 by the General Assembly. In order to further this objective the ETSI IPR
37 POLICY seeks to reduce the risk to ETSI, MEMBERS, and others applying
38 ETSI STANDARDS and TECHNICAL SPECIFICATIONS, that
39 investment in the preparation, adoption and application of STANDARDS
40 could be wasted as a result of an ESSENTIAL IPR for a STANDARD or
41 TECHNICAL SPECIFICATION being unavailable. In achieving this
42 objective, the ETSI IPR POLICY seeks a balance between the needs of
43 standardization for public use in the field of telecommunications and the
44 rights of the owners of IPRs.

1 3.2 IPR holders whether members of ETSI and their AFFILIATES or third
2 parties, should be adequately and fairly rewarded for the use of their IPRs in
3 the implementation of STANDARDS and TECHNICAL
4 SPECIFICATIONS.

5 3.3 ETSI shall take reasonable measures to ensure, as far as possible, that its
6 activities which relate to the preparation, adoption and application of
7 STANDARDS and TECHNICAL SPECIFICATIONS, enable
8 STANDARDS and TECHNICAL SPECIFICATIONS to be available to
9 potential users in accordance with the general principles of standardization.

10 Samsung admits that Clause 12 of the April 8, 2009 ETSI IPR Policy states in part: “The
11 POLICY shall be governed by the laws of France.” Except as expressly admitted, Samsung lacks
12 knowledge sufficient to form a belief about the remaining allegations of Paragraph 60 and
13 therefore denies them.

14 61. Samsung admits that it was and is a member of ETSI and agreed to comply with
15 the ETSI Rules of Procedure, including the ETSI IPR Policy. Samsung admits that it participated
16 in the development of the UMTS standard. Samsung admits that it submitted declarations to
17 ETSI that contained lists of patents and this statement: “The SIGNATORY and/or its
18 AFFILIATES hereby declare that they are prepared to grant irrevocable licenses under the IPRs on
19 terms and conditions which are in accordance with Clause 6.1 of the ETSI IPR Policy, in respect
20 of the STANDARD, to the extent that the IPRs remain ESSENTIAL.” Except as expressly
21 admitted, Samsung lacks knowledge sufficient to form a belief about the remaining allegations of
22 Paragraph 61 and therefore denies them.

23 62. Samsung admits that it has represented to Apple that Samsung owns patents that
24 are essential to the UMTS standard. Except as expressly admitted, Samsung denies the
25 remaining allegations of Paragraph 62.

26 63. Samsung admits that Samsung employees participated in ETSI Working Groups.
27 Except as expressly admitted, Samsung denies the remaining allegations of the preamble to
28 Paragraph 63.

 (a) Samsung admits that the '087 Patent is entitled “Method and Apparatus for
Performing Non-Scheduled Transmission in a Mobile Communication System for Supporting an
Enhanced Uplink Data Channel.” Samsung admits that Young-Bum Kim, Sung-Ho Choi,

1 Sueng-Hun Kim, Ju-Ho Lee, Yong-Jun Kwak, Youn-Hyoung Heo, and Joon-Young Cho are
2 named inventors of the '087 Patent. Samsung admits that the claimed priority date for the '087
3 Patent, based on the filing of a related Korean patent application, is July 16, 2004. Samsung
4 admits that another related Korean patent application was filed on August 11, 2004. Samsung
5 admits that, on or about May 16, 2006, Samsung identified the patent application that issued as the
6 '087 Patent as IPR that is, or is likely to become, essential IPR in relation to version 6.2.0 of
7 UMTS specification 25.309. Samsung denies that it concealed the existence of its IPR during the
8 standards-setting process. Except as expressly admitted, Samsung lacks knowledge sufficient to
9 form a belief about the remaining allegations of Paragraph 63(a) and therefore denies them.

10 (b) Samsung admits that the '596 Patent is entitled "Method and Apparatus for
11 Signaling Control Information of Uplink Packet Data Service in Mobile Communication System."
12 Samsung admits that Seong-Hun Kim and Gert Jan Van Lieshout are named inventors of the '596
13 Patent. Samsung admits that the claimed priority date for the '596 patent, based on the filing of a
14 related Korean patent application, is November 9, 2004. Samsung admits that, on or about May
15 6, 2010, Samsung identified the '596 Patent as a patent that may be or may become essential in
16 relation to UMTS specification 25.321. Samsung denies that it concealed the existence of its IPR
17 during the standards-setting process. Except as expressly admitted, Samsung lacks knowledge
18 sufficient to form a belief about the remaining allegations of Paragraph 63(b) and therefore denies
19 them.

20 64. Samsung denies the allegations of the preamble to Paragraph 64.

21 (a) Samsung admits that the '087 Patent relates to a method and apparatus for
22 handling non-scheduled data transmissions so as to reduce interference from user equipment
23 devices. Except as expressly admitted, Samsung denies the remaining allegations of Paragraph
24 64(a).

25 (b) Samsung admits that the '596 Patent relates to a method and apparatus for
26 transmitting control information relating to an uplink packet data service. Except as expressly
27 admitted, Samsung denies the remaining allegations of Paragraph 64(b).

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1 65. Samsung admits that by letter dated December 14, 1998, signed by Young Ky Kim,
2 addressed to ETSI SMG2, Samsung stated:

3 This declaration is given on December 14, 1998 by Samsung Electronics
4 Corporation (“SEC”) of Seoul Korea to the European Telecommunications
Standards Institute (ETSI) of Sophia Antipolis France.

5 With regard to the W-CDMA technology being elaborated by ETSI as a standard
6 for the UMTS Terrestrial Radio Access (UTRA) FDD mode, SEC is prepared to
7 grant licenses to its essential IPRs on a fair, reasonable, and non-discriminatory
basis in accordance with the terms and conditions set forth in Clause 6.1 of the
ETSI IPR Policy.

8 Except as expressly admitted, Samsung denies the remaining allegations of Paragraph 65.

9 66. Denied.

10 67. Denied.

11 68. Denied.

12 69. Samsung denies the allegations of the preamble to Paragraph 69.

13 (a) Samsung admits that, on or about May 16, 2006, Seung Gun Park, Vice
14 President, signed an IPR Information Statement and Licensing Declaration that Samsung
15 submitted to ETSI. Samsung admits that Annex 2 to that document lists the Korean patent
16 application to which the '087 patent claims priority, as well as the U.S. patent application that
17 issued as the '087 Patent. Samsung admits that the May 16, 2006 IPR Information Statement and
18 Licensing Declaration states that “The SIGNATORY and/or its AFFILIATES hereby declare that
19 they are prepared to grant irrevocable licenses under the IPRs on terms and conditions which are
20 in accordance with Clause 6.1 of the ETSI IPR Policy, in respect of the STANDARD, to the
21 extent that the IPRs remain ESSENTIAL.”

22 (b) Samsung admits that, on or about May 6, 2010, Heungmo Lee, Vice
23 President, signed an IPR Information Statement and Licensing Declaration that Samsung
24 submitted to ETSI. Samsung admits that the IPR Information Statement Annex to that document
25 lists the '596 Patent. Samsung admits that the May 6, 2010 IPR Information Statement and
26 Licensing Declaration states that “To the extent that the IPR(s) disclosed in the attached IPR
27 Information Statement Annex are or become, and remain ESSENTIAL in respect of the ETSI
28 Work Item, STANDARD and/or TECHNICAL SPECIFICATION identified in the attached IPR

1 Information Statement Annex, the Declarant and/or its AFFILIATES are prepared to grant
2 irrevocable licences under this/these IPR(s) on terms and conditions which are in accordance with
3 Clause 6.1 of the ETSI IPR Policy.”

4 Except as expressly admitted, Samsung denies the remaining allegations of Paragraph 69.

5 70. Denied.

6 71. Denied.

7 72. Denied.

8 73. Denied.

9 74. SEA and STA were not parties to *Samsung Elec. Co. v. InterDigital Commc'ns*
10 *Corp.*, No. 07-0167 (D. Del.), and on that basis Samsung denies that “Samsung” made the quoted
11 statements. Samsung denies the remaining allegations of Paragraph 74.

12 75. Denied.

13 76. SEA and STA were not parties to *Samsung Elec. Co. v. InterDigital Commc'ns*
14 *Corp.*, No. 07-0167 (D. Del.), and on that basis Samsung denies that “Samsung” made the quoted
15 statement. SEA and STA were not parties to *Telefonaktiebolaget LM Ericsson v Samsung*
16 *Electronics UK Ltd.*, HC06 C00618 (Mar. 15, 2007), and on that basis Samsung denies that
17 “Samsung” made the quoted statement. Samsung lacks knowledge sufficient to form a belief
18 about Apple’s allegations regarding investments Apple has made in developing and marketing the
19 iPhone and iPad. Except as expressly stated, Samsung denies the remaining allegations of
20 Paragraph 76.

21 **APPLE’S ALLEGATIONS REGARDING ALLEGED BREACH OF FRAND**

22 **OBLIGATIONS REGARDING ESSENTIAL PATENTS**

23 77. Denied.

24 78. Samsung admits that the iPhone was introduced in 2007. Samsung admits that
25 Apple and Samsung have a continuing business relationship. Samsung admits that it informed
26 Apple of Apple’s infringement of Samsung’s patents in summer 2010. Except as expressly
27 admitted, Samsung denies the remaining allegations of Paragraph 78.

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1 79. Samsung admits that it notified Apple of Apple's infringement of Samsung patents
2 during patent licensing discussions between Apple and Samsung. Except as expressly admitted,
3 Samsung denies the remaining allegations of Paragraph 79.

4 80. Samsung admits that Apple sued Samsung, bringing claims that included claims
5 styled as patent, trade dress, and trademark infringement. Except as expressly admitted,
6 Samsung denies the remaining allegations of Paragraph 80.

7 81. Samsung admits that it filed counterclaims against Apple seeking, among other
8 things, to enjoin Apple from selling products that infringe Samsung's patents. Except as
9 expressly admitted, Samsung denies the remaining allegations of Paragraph 81.

10 82. Samsung admits that it has filed counterclaims against Apple in this action seeking,
11 among other things, to enjoin Apple from selling products that infringe Samsung's patents.
12 Except as expressly admitted, Samsung denies the remaining allegations of Paragraph 82.

13 83. Samsung admits that Apple has requested terms to a unilateral license to
14 Samsung's UMTS declared-essential patent portfolio. Samsung admits that Apple requested the
15 royalty base to which a rate would apply and information regarding Samsung's confidential
16 license agreements with other companies. Except as expressly admitted, Samsung denies the
17 remaining allegations of Paragraph 83.

18 84. Samsung admits that it offered Apple a license to its UMTS declared-essential
19 patents on July 25, 2011. Except as expressly admitted, Samsung denies the remaining
20 allegations of Paragraph 84.

21 85. Samsung admits that a Netherlands court made a preliminary finding that Samsung
22 had not made a FRAND offer. Except as expressly admitted, Samsung denies the remaining
23 allegations of Paragraph 85.

24 86. Samsung admits that, at this time, it has not sought an injunction against any other
25 implementer of the UMTS standard for infringing Samsung's declared-essential patents in suit.
26 Except as expressly admitted, Samsung denies the remaining allegations of Paragraph 86.

27 87. Denied.
28

1 88. Samsung admits that it is a party to a cross-license agreement with Qualcomm.
2 Except as expressly admitted, Samsung denies the remaining allegations of Paragraph 88.

3 89. Samsung admits that by letters to Derek Aberle of Qualcomm, dated April 21, 2011
4 and February 2, 2012, because Apple sued Samsung for patent infringement and made an
5 Exhaustion Claim (as that term is defined in the cross-license with Qualcomm), Samsung
6 exercised certain rights granted to it under the cross-license with Qualcomm to “limit the scope of
7 any applicable Samsung covenants to Qualcomm and its customers to exclude any products made
8 for, used by, sold to or otherwise transferred to Apple or any affiliate of Apple.” Except as
9 expressly admitted, Samsung denies the remaining allegations of Paragraph 89.

10 90. Denied.

11 91. Samsung admits that it notified Apple of Apple’s infringement of Samsung patents
12 in summer 2010 during patent licensing discussions between Apple and Samsung. Except as
13 expressly admitted, Samsung denies the remaining allegations of Paragraph 91.

14 92. Denied.

15 93. Denied.

16 94. Samsung admits that the following statement appears on page 92 of the July 8,
17 2008 Hearing Transcript of *Certain 3G Wideband Code Division Multiple Access (WCDMA)*
18 *Mobile Handsets and Components Thereof*, Inv. No. 337-TA-601:

19 What InterDigital demanded was not that but much, much more. They demanded
20 a nonassert by Samsung, i.e., an agreement by Samsung that it would not assert any
21 of its patents against any of InterDigital’s potential products, well beyond what
22 ETSI rules permitted and, therefore, clearly not FRAND.

23 Samsung admits that the following statement appears on pages 88-89 of the July 8, 2008 Hearing
24 Transcript of *Certain 3G Wideband Code Division Multiple Access (WCDMA) Mobile Handsets*
25 *and Components Thereof*, Inv. No. 337-TA-601:

26 First, they condition our taken a license under the standard of ETSI, which is the
27 WCDMA license, on our taking another license that’s not covered by that standard.
28 So, in other words, they are not just going to offer us a license on what they are
obligated to license us. They say if you take that, you have also got to take
another license. So they are tying the two.

ETSI rules don’t permit that. And that obviously increases dramatically the cost
of the license to Samsung. That is not consonant with their FRAND obligation.

1 Except as expressly admitted, Samsung denies the remaining allegations of Paragraph 94.

2 **APPLE'S ALLEGATIONS REGARDING ANTICOMPETITIVE AND UNFAIR**
3 **CONDUCT**

4 95. Denied.

5 96. Samsung lacks knowledge sufficient to form a belief about the allegations of
6 Paragraph 96 and therefore denies them.

7 97. Samsung lacks knowledge sufficient to form a belief about the allegations of
8 Paragraph 97 and therefore denies them.

9 98. Denied.

10 99. Denied.

11 100. Denied.

12 101. SEA and STA were not parties to *Telefonaktiebolaget LM Ericsson v Samsung*
13 *Electronics UK Ltd.*, HC06 C00618 (Mar. 15, 2007), and on that basis Samsung denies that
14 "Samsung" made the quoted statement.

15 102. Samsung admits that Samsung has identified the patent application that issued as
16 the '087 Patent as IPR that is, or is likely to become, essential IPR in relation to an ETSI standard.
17 Samsung admits that Samsung has identified the '596 Patent as a patent that may be or may
18 become essential in relation to at least one ETSI standard. Except as expressly admitted,
19 Samsung denies the remaining allegations of Paragraph 102.

20 103. Samsung admits that its declared-essential patents concern specific aspects of radio
21 signal transmission in a UMTS network. Except as expressly admitted, Samsung denies the
22 remaining allegations of Paragraph 103.

23 104. Denied.

24 105. Samsung admits that UMTS is employed in various different countries. Except as
25 expressly admitted, Samsung denies the remaining allegations of Paragraph 105.

26 106. Denied.

27 107. Denied.

28 108. Denied.

1 109. Denied.

2 110. Denied.

3 **FIRST COUNTERCLAIM**

4 **(Declaratory Judgment of Non-Infringement of the '087 Patent)**

5 111. Samsung incorporates and realleges its responses to Paragraphs 1 through 110
6 above as if fully set forth herein.

7 112. Denied.

8 113. Denied.

9 **SECOND COUNTERCLAIM**

10 **(Declaratory Judgment of Invalidity of the '087 Patent)**

11 114. Samsung incorporates and realleges its responses to Paragraphs 1 through 113
12 above as if fully set forth herein.

13 115. Denied.

14 116. Denied.

15 **THIRD COUNTERCLAIM**

16 **(Declaratory Judgment of Non-Infringement of the '596 Patent)**

17 117. Samsung incorporates and realleges its responses to Paragraphs 1 through 116
18 above as if fully set forth herein.

19 118. Denied.

20 119. Denied.

21 **FOURTH COUNTERCLAIM**

22 **(Declaratory Judgment of Invalidity of the '596 Patent)**

23 120. Samsung incorporates and realleges its responses to Paragraphs 1 through 119
24 above as if fully set forth herein.

25 121. Denied.

26 122. Denied.

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1 **FIFTH COUNTERCLAIM**

2 **(Declaratory Judgment of Non-Infringement of the '470 Patent)**

3 123. Samsung incorporates and realleges its responses to Paragraphs 1 through 122
4 above as if fully set forth herein.

5 124. Denied.

6 125. Denied.

7 **SIXTH COUNTERCLAIM**

8 **(Declaratory Judgment of Invalidity of the '470 Patent)**

9 126. Samsung incorporates and realleges its responses to Paragraphs 1 through 125
10 above as if fully set forth herein.

11 127. Denied.

12 128. Denied.

13 **SEVENTH COUNTERCLAIM**

14 **(Declaratory Judgment of Non-Infringement of the '757 Patent)**

15 129. Samsung incorporates and realleges its responses to Paragraphs 1 through 128
16 above as if fully set forth herein.

17 130. Denied.

18 131. Denied.

19 **EIGHTH COUNTERCLAIM**

20 **(Declaratory Judgment of Invalidity of the '757 Patent)**

21 132. Samsung incorporates and realleges its responses to Paragraphs 1 through 131
22 above as if fully set forth herein.

23 133. Denied.

24 134. Denied.

25 **NINTH COUNTERCLAIM**

26 **(Declaratory Judgment of Non-Infringement of the '058 Patent)**

27 135. Samsung incorporates and realleges its responses to Paragraphs 1 through 134
28 above as if fully set forth herein.

1 136. Denied.

2 137. Denied.

3 **TENTH COUNTERCLAIM**

4 **(Declaratory Judgment of Invalidity of the '058 Patent)**

5 138. Samsung incorporates and realleges its responses to Paragraphs 1 through 137
6 above as if fully set forth herein.

7 139. Denied.

8 140. Denied.

9 **ELEVENTH COUNTERCLAIM**

10 **(Declaratory Judgment of Non-Infringement of the '179 Patent)**

11 141. Samsung incorporates and realleges its responses to Paragraphs 1 through 140
12 above as if fully set forth herein.

13 142. Denied.

14 143. Denied.

15 **TWELFTH COUNTERCLAIM**

16 **(Declaratory Judgment of Invalidity of the '179 Patent)**

17 144. Samsung incorporates and realleges its responses to Paragraphs 1 through 143
18 above as if fully set forth herein.

19 145. Denied.

20 146. Denied.

21 **THIRTEENTH COUNTERCLAIM**

22 **(Declaratory Judgment of Non-Infringement of the '449 Patent)**

23 147. Samsung incorporates and realleges its responses to Paragraphs 1 through 146
24 above as if fully set forth herein.

25 148. Denied.

26 149. Denied.

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FOURTEENTH COUNTERCLAIM

(Declaratory Judgment of Invalidity of the '449 Patent)

150. Samsung incorporates and realleges its responses to Paragraphs 1 through 149 above as if fully set forth herein.

151. Denied.

152. Denied.

FIFTEENTH COUNTERCLAIM

(Declaratory Judgment of Non-Infringement of the '239 Patent)

153. Samsung incorporates and realleges its responses to Paragraphs 1 through 152 above as if fully set forth herein.

154. Denied.

155. Denied.

SIXTEENTH COUNTERCLAIM

(Declaratory Judgment of Invalidity of the '239 Patent)

156. Samsung incorporates and realleges its responses to Paragraphs 1 through 155 above as if fully set forth herein.

157. Denied.

158. Denied.

SEVENTEENTH COUNTERCLAIM

(Breach of Contract – FRAND and Other Standard-Related Misconduct)

159. Samsung incorporates and realleges its responses to Paragraphs 1 through 158 above as if fully set forth herein.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

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EIGHTEENTH COUNTERCLAIM

**(Declaratory Judgment that Apple is Entitled to a License
to Samsung's Declared-Essential Patents)**

166. Samsung incorporates and realleges its responses to Paragraphs 1 through 165 above as if fully set forth herein.

167. Samsung denies that Apple has pleaded a claim on which it is entitled to relief and, on that basis, denies the allegations of Paragraph 167.

168. Samsung denies that Apple has pleaded a claim on which it is entitled to relief and, on that basis, denies the allegations of Paragraph 168.

169. Denied.

170. Denied.

NINETEENTH COUNTERCLAIM

(Violation of Section 2 of the Sherman Act, 15 U.S.C. § 2)

171. Samsung incorporates and realleges its responses to Paragraphs 1 through 170 above as if fully set forth herein.

172. Denied.

173. Denied.

174. Denied.

175. Denied.

TWENTIETH COUNTERCLAIM

(Unfair Competition Under Cal. Bus. & Prof. Code § 17200)

176. Samsung incorporates and realleges its responses to Paragraphs 1 through 175 above as if fully set forth herein.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

1 182. Denied.

2 183. Denied.

3 **TWENTY-FIRST COUNTERCLAIM**

4 **(Inequitable Conduct Before the United States Patent and Trademark**

5 **Office During Prosecution of the '596 Patent)**

6 184. Samsung incorporates and realleges its responses to Paragraphs 1 through 183
7 above as if fully set forth herein.

8 185. Denied.

9 186. Samsung admits that the '596 patent names Soeng-Hun Kim and Gert Jan Van
10 Lieshout as inventors. Samsung admits it has alleged, among other things, that Apple has
11 infringed claims 1, 4, 6, 13, 16 and 18 of the '596 patent. Samsung admits those claims recite the
12 language quoted by Apple in Paragraph 186. Except as expressly admitted, Samsung denies the
13 remaining allegations of Paragraph 186.

14 187. Samsung admits that the '371 Application was filed on February 6, 2003 and
15 published on August 7, 2003. Samsung admits that Mr. Kim is named as an inventor of the '371
16 Application. Except as expressly admitted, Samsung denies the remaining allegations of
17 Paragraph 187.

18 188. Denied.

19 189. Denied.

20 190. Denied.

21 191. Denied.

22 192. Denied.

23 193. Denied.

24 194. Denied.

25 **PRAYER FOR RELIEF**

26 Samsung denies that Apple is entitled to any relief sought by the Apple Amended
27 Counterclaims in Reply in its Prayer for Relief.

28

1 **II. AFFIRMATIVE DEFENSES**

2 195. By alleging the Affirmative Defenses set forth below, Samsung does not agree or
3 concede that it bears the burden of proof or the burden of persuasion on any of these issues,
4 whether in whole or in part. For its Affirmative Defenses to Apple's Amended Counterclaims in
5 Reply, Samsung alleges as follows:

6 **FIRST AFFIRMATIVE DEFENSE**

7 **(Failure to State a Claim)**

8 196. Apple's Amended Counterclaims in Reply, or one or more claims for relief set
9 forth therein, fails to state a claim upon which relief can be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **(Waiver, Acquiescence, and Estoppel)**

12 197. Each of the purported claims for relief set forth in Apple's Amended Counterclaims
13 in Reply is barred by the doctrines of waiver, acquiescence, and estoppel.

14 **THIRD AFFIRMATIVE DEFENSE**

15 **(Laches)**

16 198. Apple's Amended Counterclaims in Reply are barred, in whole or in part, under the
17 doctrine of laches.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Unclean Hands)**

20 199. Apple's Amended Counterclaims in Reply are barred, in whole or in part, under the
21 doctrine of unclean hands.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 **(Nonperformance by Apple)**

24 200. Apple failed to perform all conditions, covenants and promises required to be
25 performed in accordance with the alleged agreements upon which Apple bases its claims for relief,
26 and Apple is therefore not entitled to any benefits thereunder.

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SIXTH AFFIRMATIVE DEFENSE

(Frustration of Purpose)

201. Apple is not entitled to the relief sought, in whole or in part, because enforcing the agreements alleged in the Amended Counterclaims in Reply would result in frustration of purpose.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

202. Apple's Amended Counterclaims in Reply are barred, in whole or in part, by the statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

(Business Justification)

203. Apple's Nineteenth Counterclaim in Reply is barred, in whole or in part, because to the extent that Samsung engaged in any of the actions alleged, Samsung's actions were justified as valid business decisions.

NINTH AFFIRMATIVE DEFENSE

(No Antitrust Standing)

204. Apple's Nineteenth Counterclaim in Reply is barred, in whole or in part, because Apple did not suffer antitrust injury and did not suffer injury of the type the antitrust laws were designed to prevent.

TENTH AFFIRMATIVE DEFENSE

(No Standing Under § 17200)

205. Apple's Twentieth Counterclaim in Reply is barred, in whole or in part, because Apple has not suffered injury in fact and has not lost money or property as a result of unfair competition by Samsung.

ELEVENTH AFFIRMATIVE DEFENSE

(Acts of Apple)

206. On information and belief, the damages, if any, that were allegedly sustained by Apple as a result of the acts complained of in its Amended Counterclaims in Reply were caused in

1 whole or in part or were contributed to by reason of the acts, omissions, negligence, and/or
2 intentional misconduct of Apple, its agents, predecessors, and/or related entities.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **(Actions of Others)**

5 207. Apple's Amended Counterclaims in Reply are barred, in whole or in part, because
6 Samsung is not liable for the acts of others over whom it has no control.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 **(No Causation)**

9 208. Apple's Amended Counterclaims in Reply are barred, in whole or in part, because
10 Apple's damages, if any, were not caused by Samsung.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 **(No Damage)**

13 209. Without admitting that Apple's Amended Counterclaims in Reply state a claim,
14 there has been no damage in any amount, manner or at all by reason of any act alleged against
15 Samsung in Apple's Amended Counterclaims in Reply, and the relief prayed for in the Amended
16 Counterclaims in Reply therefore cannot be granted.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 **(Failure to Mitigate)**

19 210. Apple's Amended Counterclaims in Reply are barred, in whole or in part, because
20 of Apple's failure to mitigate damages, if such damages exist.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 **(Adequate Remedy at Law)**

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

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SEVENTEENTH AFFIRMATIVE DEFENSE

(No Irreparable Harm)

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

EIGHTEENTH AFFIRMATIVE DEFENSE

(Advisory Opinion)

213. Apple’s Amended Counterclaims in Reply are barred, in whole or in part, because they seek an advisory opinion.

NINETEENTH AFFIRMATIVE DEFENSE

(Duplicative Claims)

214. Without admitting that Apple’s Amended Counterclaims in Reply state a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims against Samsung or others for any alleged single wrong.

TWENTIETH AFFIRMATIVE DEFENSE

(Splitting a Cause of Action)

215. Apple’s Amended Counterclaims in Reply are barred, in whole or in part, because Apple has asserted the same claims for relief in multiple lawsuits.

ADDITIONAL DEFENSES

216. Samsung reserves the right to assert additional defenses based on information learned or obtained during discovery.

PRAYER FOR RELIEF ON AMENDED COUNTERCLAIMS IN REPLY

Wherefore, Samsung respectfully requests entry of judgment on Apple’s Amended Counterclaims in Reply as follows:

A. That the Court dismiss with prejudice any and all claims of Apple’s Amended Counterclaims in Reply and order that Apple take nothing as a result of the Amended Counterclaims in Reply and that all of Apple’s prayers for relief are denied;

B. That the Court enter judgment in favor of Samsung and against Apple on the Amended Counterclaims in Reply;

