

EXHIBIT 1

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16 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,

22 vs.

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

26 Defendants.

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CASE NO. 12-CV-00630-LHK

**SAMSUNG’S MOTION TO STAY AND
SUSPEND THE JUNE 29, 2012
PRELIMINARY INJUNCTION PENDING
APPEAL OR, ALTERNATIVELY,
PENDING DECISION BY FEDERAL
CIRCUIT ON STAY PENDING APPEAL**

FILED UNDER SEAL
**HIGHLY CONFIDENTIAL – ATTORNEYS’
EYES ONLY**

Date: July 2, 2012
Place: Courtroom 8, 4th Floor
Judge: Hon. Lucy H. Koh

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Defendants Samsung Electronics Co., Ltd., Samsung
3 Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively
4 “Samsung”) shall and hereby do move the Court, pursuant to Rule 62(c) of the Federal Rules of
5 Civil Procedure, to stay and suspend pending appeal its June 29, 2012 Order Granting Motion for
6 Preliminary Injunction (“Order”), or, in the alternative, pending a decision by the United States
7 Court of Appeals for the Federal Circuit on an emergency motion for stay pending appeal, which
8 Samsung will file within 48 hours from an order denying this motion. This motion is based on this
9 notice of motion and supporting memorandum, the evidence cited therein, and such other written
10 or oral argument as may be presented at or before the time this motion is taken under submission
11 by the Court.

12 **RELIEF REQUESTED**

13 Samsung seeks an order staying and suspending the Court’s June 29, 2012 Order Granting
14 Motion for Preliminary Injunction pending appeal, or, in the alternative, pending a decision by the
15 United States Court of Appeals for the Federal Circuit on an emergency motion for stay pending
16 appeal, which Samsung will file within 48 hours of an order denying a stay pending appeal.

17
18 DATED: July 1, 2012

QUINN EMANUEL URQUHART &
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25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
ARGUMENT	1
I. SAMSUNG HAS A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS APPEAL, WHICH AT LEAST RAISES SUBSTANTIAL QUESTIONS	2
A. <u>The Court’s Finding That Apple Will Suffer Irreparable Harm Was Based On Legally Insufficient Evidence That Samsung and Apple Are Competitors</u>	2
B. <u>The Court’s Order Is Inconsistent With the Federal Circuit’s Directive That Market Share Losses Must Be Substantial</u>	4
C. <u>The Court’s Causation Finding As To The ’604 Patent Was Erroneous, Or At A Minimum Raises Substantial Questions</u>	5
D. <u>“People” and “Browser” Are Not Infringing Modules Under the Court’s Construction</u>	6
E. <u>The Court’s Infringement Finding Reads Out the Claim Limitation of “locating information in a network”</u>	7
F. <u>The Court Did Not Address Neal, Which Anticipates Claim 6 Under the Court’s Construction</u>	7
G. <u>There Is at Least a Substantial Issue Regarding Claim Construction of the “Each” Limitation</u>	9
II. THE EQUITIES TIP SHARPLY IN FAVOR OF A STAY PENDING APPEAL	9
CONCLUSION	10

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Cases

Adv. Cardiovascular Sys., Inc. v. Medtronic Vascular, Inc.,
579 F. Supp. 2d 554 (D. Del. 2008)3

Advanced Med. Optics, Inc. v. Alcon Laboratories, Inc.
2005 WL 3454283 (D. Del. Dec. 16, 2005).....2

Apple v. Samsung,
678 F.3d at 1314 (Fed. Cir. 2012)4, 5

Costco Wholesale Corp. v. Hoen,
2006 WL 2645183 (W.D. Wash. Sept. 14, 2006)2

County of Sonoma v. Fed. Housing Fin. Agency,
2011 WL 4536894 (N.D. Cal. Sept. 30, 2011).....2

Davila v. Cty of San Joaquin,
2008 WL 4426669 (E.D. Cal. Sept. 26, 2008)2

GTE Prods. Corp. v. Kennametal, Inc.,
772 F. Supp. 907 (W.D. Va. 1991)2

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807 F. Supp. 2d 791 (E.D. Wis. 2011)2, 3

Illinois Tool Works, Inc. v. Grip-Pak,
906 F.2d 679 (Fed. Cir. 1990).....2

Lankford v. Sherman,
451 F.3d 496 (8th Cir. 2006).....3

Merial Ltd. v. Cipla Ltd.,
426 Fed. App'x 915 (Fed. Cir. 2011).....1

Rowe v. Dror,
112 F.3d 473 (Fed. Cir. 1997).....7

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547 U.S. 388 (2006)4

Standard Havens Prods., Inc. v. Gencor Indus., Inc.,
897 F.2d 511 (Fed. Cir. 1990).....1

1 **Preliminary Statement**

2 The Court should grant a temporary stay of the injunction order because Samsung has a
3 strong likelihood of succeeding on appeal, and at a minimum has a substantial case on the merits.

4 Prior merits arguments aside, the Court’s Order highlights new problems and
5 inconsistencies that make it improper to enjoin the Galaxy Nexus based on the ’604 patent:

- 6 • The Court based its finding regarding lost market share on the bare fact that Apple
7 and Samsung are competitors; that is legally insufficient to prove any lost market
8 share, however, much less “*substantial*” market share.
- 9 • The Court’s causation finding relies on evidence of a different feature (Siri, the
10 voice command and response feature) in a different product (Apple’s iPhone); there
11 is no evidence that the unified search aspect of the accused feature (Quick Search
12 Box, which does not support voice interaction) drove any sales of the accused
13 product (Galaxy Nexus).
- 14 • The Court’s finding that “People” and “Browser” constitute infringing “modules”
15 is inconsistent with the claim construction of “modules” the Court applied for
16 validity purposes. It also vitiates the claim limitation whereby the claimed
17 apparatus must search *in a network*, not just on local media.
- 18 • The Court also failed to address the Neal prior art reference, which, under the
19 Court’s construction, anticipates every limitation of claim 6.

20 The status quo is that the Galaxy Nexus is currently being marketed, sold, and serviced as
21 it has been for quite some time, with business operations, vendor promotions (particularly
22 impending “back to school” promotions), and customer relationships all having formed around it.
23 Samsung respectfully submits that this status quo should remain in place pending the Federal
24 Circuit’s expeditious resolution of the pending appeal so that Samsung, its customers, and the
25 public may avoid substantial disruption and irreparable harm that cannot be adequately repaired in
26 the event the injunction is ultimately reversed. On the other side of the coin, continued,
27 incremental sales of the Galaxy Nexus during an expedited appeal pose minimal harm to Apple.
28 Thus, the equities tip sharply in favor of an interim stay.

29 **Argument**

30 “To obtain a stay, pending appeal, a movant must establish a strong likelihood of success
31 on the merits, or, failing that, nonetheless demonstrate a substantial case on the merits provided
32 that the harm factors militate in its favor.” *Merial Ltd. v. Cipla Ltd.*, 426 Fed. App’x 915, 915

1 (Fed. Cir. 2011) (unpublished) (citing *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). “When the
2 request for a stay is made to a district court, common sense dictates that the moving party need not
3 persuade the court that it is likely to be reversed on appeal.” *Costco Wholesale Corp. v. Hoen*,
4 2006 WL 2645183, at *2 (W.D. Wash. Sept. 14, 2006). If serious legal questions exist on the
5 appeal, the Court may grant a stay even if it “believes [its] ruling was correct.” *Davila v. Cty of*
6 *San Joaquin*, 2008 WL 4426669, at *2 (E.D. Cal. Sept. 26, 2008). The Court may also stay
7 enforcement long enough for the Federal Circuit to rule on a motion to stay. *County of Sonoma v.*
8 *Fed. Housing Fin. Agency*, 2011 WL 4536894, at *2 (N.D. Cal. Sept. 30, 2011).

9 **I. SAMSUNG HAS A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS OF**
10 **ITS APPEAL, WHICH AT LEAST RAISES SUBSTANTIAL QUESTIONS**

11 Samsung respectfully submits that it has a strong likelihood of success on the merits of its
12 appeal and at least can raise substantial questions implicating reversal. Understanding that this
13 Court has considered and rejected Samsung’s prior arguments as to why a preliminary injunction
14 should not issue, Samsung will not belabor those arguments here, and instead respectfully
15 incorporates them by reference. (D.N. 115.) The remainder of this section focuses only on those
16 arguments newly or specially implicated by this Court’s June 29th Order.

17 **A. The Court’s Finding That Apple Will Suffer Irreparable Harm Was Based On**
18 **Legally Insufficient Evidence That Samsung and Apple Are Competitors**

19 The Court recognized where a plaintiff attempts to prove irreparable harm from lost market
20 share, “the mere potential of lost sales alone does not demonstrate irreparable harm, for if such
21 were the case, an injunction would issue in every case of infringement.” (Order at 66.) As a
22 matter of law, therefore, proof must be more than an inference of lost market share from the mere
23 fact that the parties are direct competitors. *See Illinois Tool Works, Inc. v. Grip-Pak*, 906 F.2d
24 679, 683 (Fed. Cir. 1990); *Generac Power Sys., Inc. v. Kohler Co.*, 807 F. Supp. 2d 791, 805 (E.D.
25 Wis. 2011).

26 In determining that Apple carried its burden, the Court relied only on evidence that Apple
27 and Samsung are direct competitors. The Court stated: “That Apple and Samsung are direct
28 competitors in the smartphone market cannot be genuinely disputed.” (Order at 66.) [REDACTED]

1 [REDACTED]
2 [REDACTED] (*Id.* at 67–68.) This evidence is insufficient, in
3 itself, to show irreparable harm. Yet Apple’s evidence begins and ends there. Apple offered no
4 evidence of how much market share it has lost or will lose specifically as a result of the *Galaxy*
5 *Nexus*, as distinct from Samsung’s *overall product array*. It offered no revenue or market-share
6 projections that point to any losses in the future; moreover, the evidence of its financial
7 performance and smartphone sales shows it faces, at most, *de minimis* losses. Its 30(b)(6) witness
8 on irreparable harm testified unequivocally that [REDACTED]
9 [REDACTED] (Opp. Br. at 23.)

10 The only purportedly direct evidence of market share was [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 [REDACTED] (Order at 68.) Historical evidence of Apple’s alleged lost market share in the
14 fourth quarter of 2010, based on a *different product*, is likewise insufficient to prove that Apple
15 will suffer an irreparable loss of market share to the *Galaxy Nexus*. *See Lankford v. Sherman*, 451
16 F.3d 496, 513 (8th Cir. 2006) (remanding preliminary injunction request because “many facts
17 have changed since the original hearing”); *Adv. Cardiovascular Sys., Inc. v. Medtronic Vascular,*
18 *Inc.*, 579 F. Supp. 2d 554, 559 n.9 (D. Del. 2008) (no injunction where patentee relied on “prior
19 market data” showing market share losses later recouped). Moreover, substantial, un rebutted
20 evidence showed that [REDACTED]
21 [REDACTED]

22 Finally, even if competition for market
23 share in this space may amount to a “two horse race” between Apple and Samsung, it most
24 certainly is not a two *product* race. On-point evidence proves that it was not the *Galaxy Nexus*
25 that moved the needle for Samsung. (Opp. Br. at 23–25.)

26 The Court also discussed the reasons why Apple’s loss of market share may be long term
27 and difficult to quantify, including Apple’s claim that the market is in a “critical juncture” and that
28 its losses in smartphones “would radiate out in a multitude of other ways.” (Order at 70-76.) This
too is legally insufficient to prove lost smartphone market share, because the difficulty in

1 quantifying lost market share resulting from its long-term or “radiating” effects *presupposes a loss*
 2 *of smartphone market share in the first place*. Putting aside that Apple and Samsung are
 3 competitors, there is nothing else in the record to satisfy Apple’s burden of proving likely and
 4 immediate loss of market share.

5 **B. The Court’s Order Is Inconsistent With the Federal Circuit’s Directive That**
 6 **Market Share Losses Must Be Substantial**

7 Mere loss of sales cannot justify an injunction; instead, irreparable harm in the form of lost
 8 market share must be shown. *See eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 393 (2006).
 9 Moreover, in its recent order, the Federal Circuit held that a “mere showing that [the patentee]
 10 might lose some insubstantial market share as a result of [the accused’s] infringement is not
 11 enough.” *Apple v. Samsung*, 678 F.3d at 1314, 1324–25 (Fed. Cir. 2012). Thus, the Court’s
 12 finding that Apple will suffer irreparable harm depends upon adequate proof that Apple will lose
 13 *substantial* market share without an injunction. Further, as the Court recognized, Apple must
 14 show it faces such loss not simply from the *Galaxy Nexus*, but from the presence or absence
 15 specifically of its *infringing feature*. (Order at 80.)

16 The Court did not, and could not, determine that the inclusion of the alleged unified search
 17 feature of the Galaxy Nexus has caused Apple any substantial loss of market share. Apple offered
 18 no such evidence. To the contrary, [REDACTED]

19 [REDACTED] (Wagner Decl. Ex. B, Sch. 8 & Ex. EEE ([REDACTED])
 20 [REDACTED]; Velturo Reply Decl. Ex. 22 [REDACTED])

21 [REDACTED].) That number is insufficient to pose substantial loss of
 22 market share. There also is no evidence beyond pure speculation that any material number of
 23 Galaxy Nexus purchasers would have purchased any different phone—let alone an iPhone—if the
 24 Galaxy Nexus omitted the Google Quick Search Box. Whatever the portion may be, [REDACTED]

25 [REDACTED]
 26 that requirement is toothless.

1 **C. The Court’s Causation Finding As To The ’604 Patent Was Erroneous, Or At**
 2 **A Minimum Raises Substantial Questions**

3 The Federal Circuit held that to be entitled to a preliminary injunction, Apple must prove
 4 that any infringing features of the Galaxy Nexus drive sales *of the Galaxy Nexus* to the point of
 5 causing a *substantial loss of market share* to Apple. *Apple*, 678 F.3d at 1324–25. As the Court
 6 acknowledged, although “the Federal Circuit has made clear that the patented features must ‘drive
 7 the demand’ for the accused product, the Federal Circuit has not provided more detailed guidance
 8 on what standard of proof would satisfy the movant’s burden.” (Order at 79.)

9 Under an appropriate standard of proof, Apple has fallen well short. The Court recognized
 10 that Apple lacks any direct evidence that the accused functionality specifically drives sales of the
 11 Galaxy Nexus. (Order at 83.) Apple relied instead on evidence [REDACTED]
 12 [REDACTED] without isolating the functionality claimed by
 13 ’604 patent. (Order at 81.) [REDACTED]

14 [REDACTED] (Posner Decl., Ex. J at 155:24–156:4.) [REDACTED]
 15 [REDACTED]

16 [REDACTED] Nevertheless, based on this “circumstantial” evidence, the
 17 Court was “persuaded by the evidence in the record that the ’604 unified search functionality
 18 drives consumer demand in a way that affects substantial market share.” (Order at 83, 85.)

19 The evidence on which the Court relied—showing that *Siri*, a different feature than the
 20 unified search covered by the ’604 patent, drives sales of the *iPhone*, a different product—was
 21 twice removed from the question the Federal Circuit instructed the Court to consider. Apple was
 22 obliged to show a substantial loss in market share resulting from the presence *of the allegedly*
 23 *infringed patented feature in the allegedly infringing product*. The record is devoid of evidence
 24 that the unified search aspect of Quick Search Box drove so much as a single sale of the Galaxy
 25 Nexus, or that removing that aspect from the Galaxy Nexus would have any positive affect on
 26 sales of the iPhone. Absent this proof, the Court’s causation finding rests on inferences too far
 27 attenuated from the Federal Circuit’s required analysis. Nor did Apple offer any evidence that
 28 Galaxy Nexus purchasers would have viewed an alternate search functionality that did not

1 implicate the '604 patent as an unacceptable alternative. Especially given the stakes, an
2 injunction should not issue until the Federal Circuit has compared the record proof against the
3 causation standard it handed down.

4 **D. “People” and “Browser” Are Not Infringing Modules Under the Court’s**
5 **Construction**

6 The Court found that the accused Quick Search Box likely infringes claim 6 of the '604
7 Patent because the People and Browser applications constitute heuristic “modules” employing
8 different, predetermined heuristic algorithms. (Order at 24:22–27.) This finding, however, is
9 *inconsistent* with the Court’s construction of “modules” for purposes of invalidity.

10 In distinguishing the WAIS reference, the Court construed “modules” as “‘small software
11 programs that are parts of a larger application,’ meaning they ‘must be part of the application and
12 not some service or server to which the application connects.’” (Order at 26:19–22 (quoting
13 Polish Reply Decl. ¶ 73).) In other words, the claimed “modules” employing heuristic algorithms
14 must be part of the client application itself. The Court ruled that, so construed, WAIS did not
15 include “modules” because the search algorithms in WAIS were determined by the individual
16 servers, not the client application: “[W]hen a user inputs a search string, the software component
17 on the client side sends an identical query to all servers, *but there are no modules on the client*
18 *side for sending queries that are tailored to each server.*” (Order at 27:2–4 (emphasis added).)

19 The Quick Search Box works exactly the same way as WAIS. There are no modules or
20 programs *within* the Quick Search Box that tailor queries for different search areas. Instead, the
21 Quick Search Box sends the identical user input to People and Browser (and other applications)
22 and *the applications themselves* tailor and conduct the search. (Bringert Decl., ¶ 5 (“To find these
23 proposed results, *the application may perform its own search . . .*” (emphasis added)); *see also*
24 *id.* ¶¶ 6–7; Polish Reply Decl., ¶ 47 (“Each SuggestionProvider implements a Query() method that
25 handles all searches for that application.”).) People and Browser are not “small software programs
26 that are parts of” the Quick Search Box; they are separate programs to which the Quick Search
27 Box connects. If the WAIS servers are not “modules,” then neither are People and Browser.

1 **E. The Court’s Infringement Finding Reads Out the Claim Limitation of**
 2 **“locating information in a network”**

3 Claim 6 of the ’604 Patent requires an apparatus for “locating information in a network.”¹
 4 (’604 Patent at 8:26.) According to Apple’s own expert, Dr. Polish, the claim requires searching
 5 at least one *remote* source of data:

6 Consistent with the examples contained in the specification of the ’604 patent,
 7 claim 6 requires multiple heuristic modules that work in parallel to obtain search
 8 results from different areas of search. *Such areas of search include data stored on*
 9 *at least one remote source* and one local source.

10 (Polish Reply Decl., ¶ 12 (emphasis added).)

11 The Court’s order, however, finds infringement based on two applications—People and
 12 Browser—that search *only local data*. As described by Dr. Polish:

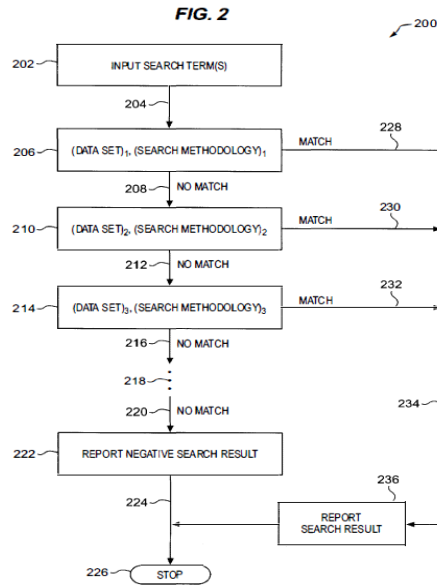
13 The Browser module maintains a list of the files, applications and web sites which
 14 were most recently accessed, and searches this list for match. The People module
 15 searches the contents of files on the local storage volume.

16 (Polish Decl., ¶ 66.) This is presumably why Apple has *never* argued that People and Browser
 17 alone constitute the infringing modules. Apple has consistently alleged infringement based on
 18 People, Browser, *and the “Google” module*, which connects to a remote Google server. But the
 19 Court has found that Apple failed to show that the Google module uses a heuristic algorithm as
 20 required by claim 6. (Order at 21–22.) Without the Google module, Apple’s infringement theory
 21 is doomed to fail because neither People nor Browser searches for information “in a network.”

22 **F. The Court Did Not Address Neal, Which Anticipates Claim 6 Under the**
 23 **Court’s Construction**

24 The Court’s order addresses only two of the four prior art references cited and discussed in
 25 Dr. Carbonell’s expert declaration. In particular, the Court made no findings with respect to
 26 United States Patent No. 6,324,534 to Neal (“Neal”), which, under the Court’s infringement
 27 analysis, clearly anticipates claim 6 of the ’604 patent. Neal discloses a plurality of modules
 28 searching different data sets using different methodologies:

1 ¹ The preamble of claim 6 is limiting because it recites a structural limitation (“a network”) of
 2 the claimed invention. *See Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997).



The present invention is a system and method for cascading search methodologies on preselected segments, or sets, of data. Each data set is paired with one or more search strategies so that the overall effect is to supply the user with the most advantageous match to a keyword search. Search strategies may include one or more of the following: exact search, stem search, soundex search, and fuzzy logic search.

(Neal at 3:25–31 & Fig. 2 (Carbonell Ex. QQ); *see also* Carbonell Decl., ¶¶ 163–70.) Apple does not dispute that several of the search methods disclosed in Neal are heuristic (soundex, fuzzy logic, synonyms, and natural adjectives).² (*See* Carbonell Decl., ¶ 168.)

Apple made only two arguments against Neal. Apple’s main argument was that Neal does not disclose more than one search area. (Polish Reply Decl., ¶ 85.) But it does:

In one embodiment of the invention, the system is configured to search first within a catalog (or data set) of items that are designated as in-house, and then to fail-over to a *second tier catalog (or data set)* of vendor-supplied items available for short-term delivery.

(Neal at 3:45–50 (Carbonell Ex. QQ) (emphasis added).) Neal thus discloses multiple data sets, each of which constitutes an area of search. Apple also argued that the system disclosed in Neal *could* have been implemented in a single module, rather than multiple modules. (Polish Reply Decl., ¶ 85.) But alternative embodiments are irrelevant, because Neal clearly discloses an embodiment using multiple modules, as illustrated in Figure 2 above. (Carbonell Depo. at 243:14–18 (“Well, it would have some modules, because if you look in between them, each one

² Samsung respectfully submits that, in light of the anticipation of claim 6, the Court should also revisit its conclusion that dependent claim 19 is not obvious. But even if that finding stands, Apple has not shown, and the Court has not found, any nexus between *dependent claim 19* and Apple’s alleged irreparable harm. The Court’s nexus findings were based on the search functionality of claim 6, not the additional limitation of incremental search found in claim 19.

1 terminates either with a match and a result or with no match before the other one begins.”.)
2 Under the Court’s construction and application of claim 6, Neal anticipates every limitation.

3 **G. There Is at Least a Substantial Issue Regarding Claim Construction of the**
4 **“Each” Limitation**

5 As Apple conceded at the preliminary injunction hearing, Apple cannot demonstrate
6 likelihood of success on the ’604 patent under Samsung’s proposed construction of the “each”
7 limitation of claim 6. (June 7, 2012 Hearing Tr. at 65:5–66:25.) While the Court did not adopt
8 Samsung’s proposed construction, there is substantial support for that construction in the
9 specification (*e.g.*, ’604 Patent at 5:13–14 (“The heuristic of each plug-in module is different.”)),
10 and the language of claim 6 tracks exactly that embodiment. Because this dispositive issue is a
11 pure issue of law, and one in substantial dispute, Samsung respectfully submits that a stay is
12 appropriate until the Federal Circuit has a chance to construe the term.

13 **II. THE EQUITIES TIP SHARPLY IN FAVOR OF A STAY PENDING APPEAL**

14 Because Samsung has raised at least substantial legal questions for appeal, it is entitled to a
15 stay of the injunction if the equities tip in its favor. *See, e.g., Standard Havens Prods., Inc. v.*
16 *Gencor Indus., Inc.*, 897 F.2d 511, 516 (Fed. Cir. 1990). If a stay is not granted, irreparable
17 consequences will ripple downstream from Samsung to vendors and customers who have formed
18 plans and expectations around the Galaxy Nexus, as attested to in the accompanying declaration of
19 Paul Chapple, STA’s VP of Sales. For instance, [REDACTED]

20 [REDACTED]

21 [REDACTED] *Id.* ¶¶ 4–6. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] *Id.* ¶¶ 7–8. [REDACTED]

26 [REDACTED] *Id.* ¶ 9.

27 In contrast, Apple faces no appreciable harm in the next few months. As noted, the most
28 Apple has lost to Samsung from the Galaxy Nexus is [REDACTED]

1 [REDACTED] The irreparable impact an injunction would have on Samsung's business
2 relationships, good will and reputation is out of all proportion to any *de minimus* market share
3 Apple may lose in the near future. Moreover, the Court has found that Apple has not shown any
4 likely loss of goodwill or reputation from Samsung's sales of the Galaxy Nexus. (Order at 77.)
5 Any impact Apple may "suffer" from an inability to block Samsung's sales during the course of
6 Samsung's appeal may be good reason why the appeal should be expedited; it is not good reason
7 why the preliminary injunction should be implemented immediately rather than stayed on an
8 interim basis. *See Advanced Med. Optics, Inc. v. Alcon Laboratories, Inc.*, 2005 WL 3454283, at
9 *11 (D. Del. Dec. 16, 2005) ("While [plaintiff] will lose its right to exclusivity pending appeal and
10 may suffer some injury to its reputation as a company that enforces its patent rights, a temporary
11 stay [pending appeal] is not likely to cause irreparable harm."); *GTE Prods. Corp. v. Kennametal,*
12 *Inc.*, 772 F. Supp. 907, 920 (W.D. Va. 1991).

13 Finally, a temporary stay would protect the public's interest in orderly preservation of the
14 status quo. Although the public has a recognized interest in promoting the protection of
15 intellectual property rights, that interest is served by allowing prompt, final resolution via
16 expedited appeal, without suddenly depriving the public of an alternative to the iPhone before the
17 Federal Circuit has had its say. Accordingly, even if Samsung's likely success on appeal may
18 seem dubious to this Court, there are substantial questions to be decided and potent equitable
19 considerations that in any event suffice to justify entry of a stay pending appeal.

20 Conclusion

21 The Court should stay the June 29, 2012 Order Granting Preliminary Injunction pending
22 appeal or, alternatively, pending the Federal Circuit's ruling on an emergency motion for a stay.

23 DATED: July 1, 2012

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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26 By /s/ Patrick M. Shields
Patrick M. Shields

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