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SAMSUNG ELECTRONICS CO., LTD.  
8 and SAMSUNG ELECTRONICS AMERICA, INC.

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 TECHNOLOGY PROPERTIES LIMITED  
13 LLC, PHOENIX DIGITAL SOLUTIONS  
14 LLC, and PATRIOT SCIENTIFIC  
CORPORATION,

15 Plaintiffs,

16 v.

17 SAMSUNG ELECTRONICS CO., LTD.  
18 and SAMSUNG ELECTRONICS  
AMERICA, INC.,

19 Defendants.

CASE NO. 3:12-CV-03877-VC (PSG)

**SAMSUNG ELECTRONICS CO., LTD.’S  
AND SAMSUNG ELECTRONICS  
AMERICA, INC.’S NOTICE OF MOTION  
AND MOTION TO STRIKE  
INFRINGEMENT CONTENTIONS OR  
ALTERNATIVELY TO COMPEL  
SUPPLEMENTAL INFRINGEMENT  
CONTENTIONS**

DATE: July 21, 2015  
TIME: 10:00 AM  
PLACE: Courtroom 5  
JUDGE: Hon. Paul S. Grewal

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**NOTICE OF MOTION AND MOTION**

TO THE COURT AND ALL COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on July 21, 2015, at 10:00 AM, or as soon thereafter as counsel may be heard in Courtroom 5 of the above-titled court, located at 280 S. 1st St, San Jose, CA 95113, Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) will and hereby does move the Court for an order striking Plaintiffs Technology Properties Limited LLC, Phoenix Digital Solutions LLC, and Patriot Scientific Corporation (collectively, “Plaintiffs”) Patent L.R. 3-1 Disclosure Of Asserted Claims And Infringement Contentions or, in the alternative, an order compelling Plaintiffs to provide supplemental infringement contentions that comply with Patent Local Rule 3-1.

This motion is based upon this notice, the accompanying memorandum of points and authorities, the accompanying declaration of Aaron Wainscoat, all pleadings, papers and records on file in this action, and such oral argument as may be presented at the hearing on this matter.

**STATEMENT OF RELIEF**

Samsung seeks an order from the Court striking Plaintiffs’ January 20, 2015, Disclosure of Asserted Claims and Infringement Contentions in their entirety for failure to comply with Patent Local Rule 3-1. In the alternative, and to the extent the Court permits Plaintiffs to serve supplemental infringement contentions, Samsung requests an order compelling amended contentions that: (a) are limited only to Samsung products previously identified in Table A.4 of Exhibit A to Plaintiffs’ January 20 contentions that include one of the following processors: Qualcomm MSM7227, MSM8660 and MSM8960; Texas Instruments (“TI”) OMAP4430, OMAP 4460, OMAP4470 and OMAP3621; or Samsung S3C6410; (b) require that Plaintiff comply with Patent Local Rule 3-1 by identifying specifically where each limitation of each asserted claim is found within each accused Samsung product, including, at a minimum, providing a separate claim chart for each of these eight accused microprocessors; (c) exclude any product for which Plaintiff does not have a good faith basis to believe was infringed in the United States during the life of the patent of which it is accused of infringing; and (d) confirm that all other products not containing these eight processors (whether identified in Table A.4 of Exhibit A

1 or otherwise) are excluded from the scope of this case for all purposes, including discovery,  
2 liability, damages and injunctive relief.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 Plaintiffs' Disclosure of Asserted Claims and Infringement Contentions served on January  
6 20, 2015 ("Infringement Contentions") fail to comply with Patent Local Rule 3-1 in numerous  
7 respects. The Patent Local Rules require, among other things, that Plaintiffs disclose how each of  
8 the accused Samsung products allegedly practices each element of each asserted claim of each  
9 asserted patent. Plaintiffs purport to satisfy this requirement through three claim charts (one for  
10 each of the three Patents-in-Suit), with each claim chart focusing not on the accused products  
11 themselves, but on microprocessors allegedly incorporated into each accused product.  
12 Remarkably, however, Plaintiffs' claim charts do not chart even a single microprocessor against  
13 all of the limitations of any one asserted claim, instead relying on different aspects of eight  
14 different microprocessors: the Qualcomm (MSM7227, MSM8660 and MSM8960); TI  
15 (OMAP4430, OMAP 4460, OMAP4470 and OMAP3621) and Samsung (S3C6410) (collectively,  
16 the "Eight Processors"). For this reason alone, Plaintiffs' contentions are deficient and should be  
17 struck.

18 Plaintiffs' Infringement Contentions also include as an exhibit a 24-page list purporting to  
19 identify nearly 800 "accused" Samsung products spanning multiple product categories (Table A.4  
20 to Exhibit A to the contentions). Plaintiffs allege "on information and belief" that the operation  
21 and implementation of the Eight Processors (none of which are fully and properly charted for any  
22 claim) are nevertheless "representative" of the operation of the processors incorporated in the  
23 nearly 800 "accused" Samsung products in Table A.4. Plaintiffs, however, fail to demonstrate  
24 how the products listed in Table A.4 share the same, or substantially the same, infringing qualities  
25 as those alleged for the Eight Processors referenced (incompletely) in the claim charts, as required  
26 by well-established authority. In this regard, many of the nearly 800 products in Table A.4 do not  
27 identify any microprocessor incorporated therein, and for those that do, many are not of the same  
28 model or even the same manufacturer as the eight so-called "representative" microprocessors.

1 Specifically, while the claim charts variously reference eight processor models manufactured by  
2 Qualcomm, TI and Samsung, Table A.4 lists products with microprocessors from Zoran,  
3 Motorola, Marvell, STMicroelectronics, ST-Ericsson and NVidia, as well as dozens of different  
4 models from Qualcomm, TI and Samsung that are never mentioned in the claim charts.

5 Plaintiffs' attempt to accuse all 800 products, predicated solely on a conclusory statement  
6 concerning Plaintiffs' "information and belief" that they are "representative of the operation" of  
7 the Eight Processors, does not begin to satisfy the requirements of Patent Local Rule 3-1.  
8 Plaintiffs had two and a half years since filing their complaint in July 2012 to develop their  
9 contentions, and ample publicly available sources exist from which Plaintiffs could have, and  
10 should have, relied upon in preparing their contentions. It is prejudicial to Samsung, and the  
11 judicial process, to allow Plaintiffs to materially amend their contentions at this time – seven  
12 months after the stay in this action was lifted, a month after Samsung's invalidity contentions  
13 were filed, and less than three months before the end of fact discovery.

14 While Samsung believes that Plaintiffs' Infringement Contentions are materially deficient  
15 as to any one product or accused instrumentality, and therefore should be struck in their entirety,  
16 to the extent the Court permits Plaintiffs to supplement their contentions any order compelling  
17 such supplementation should be limited to the Eight Processors (and products containing them)  
18 that are already identified as such in Table A.4. Such order should require Plaintiffs to fully, and  
19 separately, chart each of the Eight Processors against each asserted claim of each asserted patent,  
20 in accordance with Patent Local Rule 3-1, and should confirm that any processors (or products  
21 containing them) not so charted shall be deemed struck and no longer at issue in this case.

22 In addition to the two core deficiencies discussed above, Plaintiffs' Infringement  
23 Contentions also are inadequate because they purport to accuse all of the nearly 800 Samsung  
24 products of infringing each of the three Patents-in-Suit. However, as Plaintiffs are aware, the  
25 '749 and '890 patents expired long ago in 2012 and 2013, respectively. Many of the Samsung  
26 accused products listed in Table A.4 were first released in the United States long after the  
27 expiration of those patents and therefore should not be accused of infringing those patents in this  
28 case. Plaintiffs apparently made no effort, let alone a reasonable effort, to identify purported

1 accused products on a patent-by-patent basis taking into account at least the expiration of the '749  
2 and '890 patents.

3 As explained in more detail below (and as apparent from even a cursory review of  
4 Plaintiffs' claim charts), Plaintiffs' Infringement Contentions fail to comply with the  
5 requirements of PLR 3-1, and should be struck.

## 6 **II. FACTUAL BACKGROUND**

### 7 **A. Plaintiffs' Deficient Infringement Contentions**

8 Plaintiffs filed this case against Samsung on July 24, 2012, alleging infringement of three  
9 patents: U.S. Patent Nos. 5,809,336 ("the '336 patent"), 5,440,749 ("the '749 patent") and  
10 5,530,890 ("the '890 patent") (collectively, the "Patents-in-Suit"). Dkt. No. 1. The Court stayed  
11 this case pending the resolution of a co-pending U.S. International Trade Commission  
12 investigation filed by Plaintiffs against Samsung (and others) alleging a violation with respect to  
13 the '336 patent (Inv. No. 337-TA-853, the "853 Investigation"). Dkt. No. 12. The '749 and '890  
14 patents were not at issue in the 853 Investigation. On September 6, 2013, the Administrative Law  
15 Judge issued an Initial Determination in the 853 Investigation finding that Samsung's products  
16 did not infringe the '336 patent. Dkt. No. 20 at 5-6. On February 19, 2014, the full Commission  
17 issued a notice affirming the ALJ's non-infringement findings, determining there was no violation  
18 by Samsung, and terminating the investigation. Plaintiffs did not appeal the Commission's final  
19 determination. In November 2014, the Court scheduled a case management conference for this  
20 case, during which it extended Plaintiffs' deadline to file its Rule 3-1 Infringement Contentions  
21 until January 20, 2015. Dkt. No. 22.

22 On January 20, 2015 – nearly two and a half years after filing its original complaint –  
23 Plaintiffs served their "Patent L.R. 3-1 Disclosure of Asserted Claims and Infringement  
24 Contentions" ("Infringement Contentions"), in which Plaintiffs purport to accuse approximately  
25 800 Samsung products of infringing all of the asserted claims of each of the '336, '749 and '890  
26 patents. Declaration of Aaron Wainscoat in Support of Samsung's Motion To Strike  
27 Infringement Contentions Or Alternatively To Compel Supplemental Infringement Contentions  
28

1 (“Wainscoat Decl.”) ¶¶ 2-6, Exs. 1-5.<sup>1</sup>

2 Plaintiffs’ Infringement Contentions consist of: (1) a short cover-pleading (Wainscoat  
3 Decl., Ex. 1); (2) a separate attachment referred to as “Exhibit A” which purports to list accused  
4 products from various different defendants, including Samsung (Wainscoat Decl., Ex. 2); and (3)  
5 three Samsung claim charts (identified in the contentions as Exhibits E-1, E-2 and E-3), one for  
6 each of the three Patents-in-Suit (Wainscoat Decl., Exs. 3-5).

7 • Cover Pleading: The cover pleading states that the three claim charts identify  
8 “where each element of each asserted claim [] may be found within Samsung’s Accused  
9 Instrumentalities identified in Ex. A.” Wainscoat Decl., Ex. 1 (Infr. Cont., at 7). The cover  
10 pleading also states that “[t]he list of accused instrumentalities in this action includes those listed  
11 in Ex. A, and all models thereof.” *Id.* at 5. With respect to Samsung products identified in Table  
12 A.4 of Exhibit A, there is no indication of which patents are asserted against which products.

13 • Accused Products: Exhibit A to Plaintiffs’ Infringement Contentions contains  
14 multiple tables identifying allegedly accused products, one table for each defendant in the related  
15 cases filed by Plaintiffs in this District. For Samsung, Table A.4 in Exhibit A identifies  
16 approximately 800 different Samsung products spanning numerous product categories, including  
17 mobile phones, tablets, printers, cameras and home theater systems. Wainscoat Decl., Ex. 1 (Infr.  
18 Cont., Ex. A at pp. 31-54). Table A.4 also identifies different categories of information for some,  
19 but not all, of the Samsung products, including “Memory,” “Processor,” “CPU Core,” and  
20 “Instruction Set(s).” *Id.*

21 • Claim Charts: Exhibits E-1, E-2, and E-3 to Plaintiffs’ Infringement Contentions  
22 consist of three claim charts, one for each patent. Exhibit E-1, for example, is for the ’336 patent,  
23 and purports to apply to all products identified in Table A.4, and identifies the GT-i5500 Galaxy  
24 5 / Corby Smartphone containing a Qualcomm MSM7227 processor as “an example.” Wainscoat  
25 Decl., Ex. 3 (Infr. Cont., Ex. E-1 at p.1). None of the other 800 Samsung products from Table

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26 <sup>1</sup> To minimize confusion, the exhibits offered in support of this Motion to Strike are identified by numbers  
27 (e.g., Exs. 1, 2, 3, etc. and are attached to the accompanying Wainscoat Declaration), as the various  
28 exhibits attached to Plaintiffs’ Infringement Contentions were assigned letters (e.g., Exhibit A, E-1, E-2,  
etc.).

1 A.4 are mentioned in the chart. Plaintiffs include the following footnote purporting to provide a  
 2 basis for its designation of all other Samsung products as exemplary of the Galaxy 5 / Corby  
 3 Smartphone and/or Qualcomm MSM7227 processor:

4           Infringement by the Accused Products is largely based on the operation of and  
 5 implementation of the microprocessors they contain. This chart provides some  
 6 examples of such operation that, on information and belief, are representative of  
 7 the operation of the processors in each of the Accused Products. Discovery is in  
 8 the early stages, and Plaintiffs anticipate receiving additional documents showing  
 9 the exact operation of the processor in each of the Accused Products with respect  
 10 to the accused functionality. But because many documents that Plaintiffs would  
 11 rely on to establish infringement are confidential and have not yet been produced  
 12 in this litigation, Plaintiffs anticipate receiving additional documents to confirm  
 13 the operational principles shown in this chart from Defendants and/or third  
 14 parties. Accordingly, Plaintiffs reserve the right to amend, supplement, or  
 15 augment their claim charts, infringement contentions, or infringement theories  
 16 based on documents and information later received through discovery.

17 Wainscoat Decl., Ex. 3 (Infr. Cont., Ex. E-1) at 1. Notably, all statements within Plaintiffs'  
 18 Infringement Contentions regarding representativeness of accused products are made on  
 19 "information and belief" and are devoid of any facts supporting a representative product theory.  
 20 Further, while the chart indicates that the "Samsung GT-i5500 Galaxy 5 / Corby Smartphone  
 21 contains a Qualcomm MSM7227," it does not consistently chart the Qualcomm MSM7227 for  
 22 each limitation of the accused claims.<sup>2</sup> For example, in purporting to chart limitation 6.c of the  
 23 '336 patent, "an entire oscillator disposed upon said integrated circuit substrate . . .," there is no  
 24 mention of the Qualcomm MSM7227, and Plaintiffs instead identify references only to the  
 25 Qualcomm MSM8660, MSM8960, TI OMAP4460, TI OMAP4430, TI OMAP4470 and Samsung  
 26 S3C6410X processors. Wainscoat Decl., Ex. 3 (Infr. Cont., Ex. E-1) at 7-19.

27           Exhibits E-2 and E-3, which chart the '890 and '749 patents, respectively, suffer from the  
 28 same deficiencies as the '336 patent chart in that they too claim to be representative of all 800  
 Samsung accused products in a single footnote. Wainscoat Decl., Exs. 4-5 (Infr. Cont., Exs. E-2  
 at 1, E-3 at 1). Similarly, neither of these charts actually identifies alleged infringement by a  
 single product or instrumentality for each and every asserted claim limitation, instead relying

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<sup>2</sup> The far-right column of Plaintiffs' claim charts assign shorthand notations to each of the distinct  
 limitations of the asserted claims. For example, Claim 6 in chart E-1 is divided into eight separate  
 limitations, which Plaintiffs have designated as limitations 6.a through 6.h.

1 upon bits and pieces from numerous different Qualcomm, Samsung and TI processors in a  
2 piecemeal fashion. *Id.*

3 **B. The Parties' Meet And Confer Efforts**

4 On March 10, 2015, Samsung sent a letter to Plaintiffs informing them of the deficiencies  
5 in their Infringement Contentions, offering to meet and confer, and requesting counsel's  
6 availability for discussion. Wainscoat Decl., ¶ 7, Ex. 6. On March 19, 2015, Plaintiffs sent a  
7 letter to Samsung in response, attempting to defend the adequacy of their contentions. Wainscoat  
8 Decl., ¶ 8, Ex. 7. Thereafter, on April 13, 2015, Samsung reiterated its objections to the  
9 adequacy of Plaintiffs' contentions in response to Plaintiffs Requests for Production of  
10 documents, in which Samsung: (a) generally objected to the definition of "Accused Products" for  
11 purposes of discovery on the ground that "PDS's Infringement Contentions fail to comply with  
12 the Patent Local Rules, and thus PDS, as the party with the burden of proof, has failed to  
13 adequately put Samsung on notice of which products infringe which asserted claims of the  
14 Patents-in-Suit" (*See* Wainscoat Decl., ¶ 9, Ex. 8 (General Obj. No. 9)) and, (b) specifically  
15 objected to each individual request on the ground that it "seeks discovery before PDS has served  
16 sufficient infringement contentions in this case and seeks information regarding Samsung  
17 products for which PDS has not met its burden to accuse in this case." *Id.* Given the fundamental  
18 nature of the dispute as it concerned the threshold inquiry regarding the scope of accused  
19 products, Samsung's response included an express statement of its willingness "to meet and  
20 confer with PDS to discuss Samsung's objections and to understand the scope of this request."  
21 *Id.*

22 Samsung did not receive any further response from Plaintiffs' counsel with respect to the  
23 dispute concerning infringement contentions or the scope of accused products for purposes of  
24 discovery until nearly a month later, on May 11, 2015, when Plaintiffs' *new* counsel requested to  
25 "start this meet and confer process." Wainscoat Decl., ¶ 10, Ex. 9. On May 22, 2015, the parties  
26 held a teleconference regarding Plaintiffs' discovery requests and the deficiencies in Plaintiffs'  
27 Infringement Contentions. Wainscoat Decl., ¶ 11. During the call, Plaintiffs' new counsel  
28 (which had substituted into the case on April 15) requested a copy of Samsung's original March

1 10 letter to review, and the parties agreed to schedule a follow-up teleconference the following  
2 week. *Id.* The parties held a further teleconference on May 28, 2015, but were not able to resolve  
3 their dispute during this teleconference, or during good faith efforts that ensued over the course of  
4 the next week. *Id.* As a result, Samsung notified Plaintiffs on June 8, 2015, that it considered the  
5 parties at an impasse with respect to the adequacy of Plaintiffs' Infringement Contentions and that  
6 Samsung would proceed to file a Motion to Strike (as previously discussed during the May 22  
7 and May 28 teleconferences). *Id.*

### 8 **III. LEGAL STANDARD**

9 Patent Local Rule 3-1(c) states that a patentee must provide “[a] chart identifying  
10 *specifically where* each limitation of each asserted claim is found *within each Accused*  
11 *Instrumentality.*” Patent L.R. 3-1(c) (emphasis added); *see Silicon Labs., Inc. v. Cresta Tech.*  
12 *Corp.*, No. 5:14-cv-03227-PSG, 2015 WL 846679, at \*1 (N.D. Cal. Feb. 25, 2015); *Shared*  
13 *Memory Graphics LLC v. Apple, Inc.*, 812 F. Supp. 2d 1022, 1024 (N.D. Cal. 2010); *Bender v.*  
14 *Freescale Semiconductor, Inc.*, No. C 09–1156 PHJ (MEJ), 2010 WL 1689465, at \*3 (N.D. Cal.  
15 Apr. 26, 2010). This rule was designed to “make the parties more efficient, to streamline the  
16 litigation process, and to articulate with specificity the claims and theory of a plaintiff’s  
17 infringement claims” *InterTrust Techs. Corp. v. Microsoft Corp.*, No. C 01-1640-SBA, 2003 WL  
18 23120174, at \*2 (N.D. Cal. Dec. 1, 2003). A plaintiff violates this rule where it fails to “provide  
19 reasonable notice to the defendant why the plaintiff believes it has a ‘reasonable chance of  
20 proving infringement.’” *Shared Memory Graphics*, 812 F. Supp. 2d at 1025 (quoting *View*  
21 *Eng’g, Inc. v. Robotic Vision Sys., Inc.*, 208 F.3d 981, 986 (Fed. Cir. 2000)). Moreover, a  
22 plaintiff cannot satisfy its Rule 3-1 obligations with “nothing more than a conclusion based ‘on  
23 information and belief’ that something exists or occurs.” *Solannex, Inc. v. MiaSole, Inc.*, 2013  
24 WL 1701062, at \*3 (N.D. Cal. April 18, 2013).

25 As this Court has previously explained, in order to rely on a claim that one accused  
26 product is representative of another for purposes of Rule 3-1(c), a patentee must do more than  
27 state as much – it must state how. *Silicon Labs.*, 2015 WL 846679, at \*1. Thus, while a party  
28 “can rely on representative products to meet its obligation,” Rule 3-1 “requires Plaintiff to

1 articulate how the accused products share the same, or substantially the same, infringing  
 2 [qualities] with any other product or with the . . . ‘representative’ product[.]” *Id.* (citing *Bender*,  
 3 2010 WL 1689465, at \*3); *see also Ameranth, Inc. v. Pizza Hut, Inc.*, Nos. 12-cv-00729 et al.,  
 4 2013 WL 3894880, at \*7 (S.D. Cal. July 26, 2013) (“While [the plaintiff] says it identified the  
 5 accused versions temporally, by their functional aspects or by their version names or numbers, it  
 6 must at least state how the accused previous versions are the same or reasonably similar to the  
 7 charted version, or else provide a separate chart for each version.”).

#### 8 **IV. ARGUMENT**

##### 9 **A. The Infringement Contentions Are Deficient Under Patent L.R. 3-1**

##### 10 **1. Plaintiffs Failed To Chart The Asserted Claims On Each Accused 11 Product As Required By The Patent Local Rules**

12 Plaintiffs’ Infringement Contentions plainly do not satisfy the Local Rule 3-1(c)  
 13 requirement to identify each claim limitation in each accused product. *See Silicon Labs.*, 2015  
 14 WL 846679, at \*1; *Bender*, 2010 WL 1689465, at 3. Although Plaintiffs purport to accuse  
 15 approximately 800 different products, their Infringement Contentions fail to address any of the  
 16 products individually on a limitation-by-limitation basis. Instead, the Infringement Contentions  
 17 include a single claim chart for each patent that refers generically to “each Accused Product” and  
 18 “each Accused Microprocessor.” Wainscoat Decl., Exs. 3-5 (Infr. Cont., Exs. E-1, E-2, E-3).  
 19 Further, while Plaintiffs have elected to focus their infringement contentions on the structure and  
 20 operation of the incorporated microprocessor (as the “accused instrumentality”), Plaintiffs have  
 21 not charted any one microprocessor against each limitation of each asserted claim. Instead,  
 22 Plaintiffs’ identify different “exemplary” microprocessors which they cite to indiscriminately for  
 23 different claim limitations. The result is that Plaintiffs do not even chart a single microprocessor  
 24 against all of the limitations of any one asserted claim. In total, Plaintiffs’ claim charts include  
 25 references to datasheets, specifications and user guides for the Eight Processors: Qualcomm  
 26 (MSM7227, MSM8660 and MSM8960); TI (OMAP4430, OMAP 4460, OMAP4470 and  
 27 OMAP3621) and Samsung (S3C6410), and only mention one actual accused device, the GT-  
 28 i5500 Galaxy 5 / Corby Smartphone, out of the 800 products listed in Table A.4. By way of

1 example, claim 6 of the '336 patent has eight elements (designated by Plaintiffs in Claim Chart E-  
2 1 as 6.a through 6.h). Wainscoat Decl., Ex. 3. Plaintiffs variously cite to datasheets and user  
3 guides for some, but not all, of the Eight Processors, and for some, but not all of the claim  
4 limitations. This does not comply with Rule 3-1.

5 While Plaintiffs have failed to provide adequate contentions even for the Eight Processors  
6 that make guest appearances in the claim charts, Plaintiffs' attempt to accuse the nearly 800 other  
7 Samsung products listed in Table A.4 under a "representative product" approach is even more  
8 deficient. In this regard, Plaintiffs simply state that the operation and implementation of the Eight  
9 Processors is "representative of the operation of the processors in each of the Accused Products"  
10 in Table A.4, and it makes this statement "on information and belief." Wainscoat Decl. Exs. 3-5  
11 (footnote 1 of each chart). This is improper and deficient for three reasons:

12 First, the allegedly representative claim charts are themselves deficient, as discussed  
13 above, because those charts do not chart any one microprocessor against each limitation of each  
14 asserted claim. Thus, it is impossible to use these charts to adequately analyze the  
15 representativeness of any other product.

16 Second, Plaintiffs have not provided the required analysis to show *how* the products listed  
17 in Table A.4 share the same, or substantially the same, allegedly infringing qualities as those  
18 alleged for the Eight Processors that are referenced (albeit incompletely) in the claim charts. It is  
19 not enough to say such products are representative, a plaintiff must show "how" they are  
20 representative. See *Silicon Labs.*, 2015 WL 846679, at \*1; *Bender*, 2010 WL 964197, at \*1-2.  
21 For example, in *Silicon Labs.*, the Court found that product briefs for the charted product in that  
22 case (XC5000ACQ) consisted of a single die in a package, while the non-charted allegedly  
23 represented product (XC5000CCQ) was comprised of two dies in the packaging. *Silicon Labs.*,  
24 2015 WL 846679, at \*1. This was deemed material as the Court noted that at least one claim  
25 required "a single integrated circuit" and the Court reasoned that "the apparent structure of two  
26 dies – or two circuits – is significant." *Id.* The same is true in this case. By way of example  
27 only, claim 1 of the '890 patent requires both a "main central processing unit" and "a separate  
28 direct memory access central processing unit in a single integrated circuit..." Wainscoat Decl.,

1 Ex. 4 (Exhibit E-2 at p. 1). Plaintiffs allege that the first CPU limitation is satisfied by the  
 2 presence of a “first ARM core,” and that the second, separate claimed CPU is satisfied because  
 3 “many of the Accused Microprocessors are multicore processors that contain more than one ARM  
 4 core.” *Id.* However, it is clear from publicly available documents (of the sort already cited by  
 5 Plaintiffs in their contentions), that many of the allegedly represented products in Table A.4  
 6 contain only single core processors. For example, publicly available specifications available on  
 7 ARM’s website clearly show that the ARM1176 Processor (which is identified throughout Table  
 8 A.4) has only a single core – as illustrated in the excerpt immediately below. *See* Wainscoat  
 9 Decl., ¶ 12, Ex. 10 at p. 2 (<http://www.arm.com/products/processors/classic/arm11/arm1176.php>).

ARM1176	
Architecture	ARMv6
Dhrystone Performance	1.25 DMPS/MHz
Multicore	No - Single core only

15 Thus, TPL’s infringement contentions do not establish that TPL has a reasonable chance  
 16 of succeeding in proving infringement of any product including only an ARM1176 Processor.  
 17 Like *Silicon Labs*, publicly available documents demonstrate “different structures that are  
 18 material to the infringement of at least one of the asserted claims.” *Silicon Labs.*, 2015 WL  
 19 846679, at \*1. This example illustrates why Plaintiffs cannot simply allege, on “information and  
 20 belief,” that the nearly 800 Samsung products in Table A.4 are represented by the partial  
 21 examples sprinkled throughout the claim charts.

22 Third, the products listed in Table A.4 contain dozens of different makes and models of  
 23 processors. And while some of them are made by Qualcomm, TI and Samsung, that alone does  
 24 not render them “representative” of the two or three models identified in the claim charts. *See*,  
 25 *Bender*, 2010 WL 1689465; *Ameranth*, 2013 WL 3894880, at \*7. Moreover, many of the  
 26 products in Table A.4 do not identify *any* processor whatsoever, and many more include  
 27 processors from manufacturers such as Zoran, Motorola, Marvell, STMicroelectronics, ST-  
 28 Ericsson and Nvidia – which are not mentioned anywhere in the claim charts. Having searched

1 for product information, and component information for these products, it was incumbent on  
2 Plaintiffs to either chart all of these processors, or demonstrate how they are substantially similar  
3 to the allegedly representative processors for purposes of each asserted claim. Plaintiffs failed to  
4 do this, and it is simply too late and prejudicial at this stage of the litigation for them to do it now  
5 for the first time.

6 **2. Plaintiffs’ Assertions Based On “Information And Belief” And**  
7 **Alleged Knowledge Of One Skilled In The Art Are Insufficient**

8 Plaintiffs’ Infringement Contentions also are deficient because they improperly rely on  
9 “information or belief” to establish specific claim limitations, rather than evidence. *See*  
10 *Wainscoat Decl.*, Ex. 3 (*Infr. Cont.*, Ex. E-1 at 1, 7, 26 and 30 (’336 elements 6.b, 6.c, 6.f and  
11 6.g)). Plaintiffs also rely on “information and belief” to allege disparate products are similar.  
12 *Wainscoat Decl.*, Ex. 4 (*Infr. Cont.*, Exs. E-2 at 1 (’890 element 1.a); Ex. 5 (*Infr. Cont.*, E-3 at 1  
13 (’749 Claim 1)). Such unsupported allegations do not comply with Patent Local Rule 3-1. *See,*  
14 *e.g.*, *Solannex*, 2013 WL 1701062, at \*3; *Theranos, Inc. v. Fuisz Pharma LLC*, 11–CV–05236–  
15 YGR, 2012 WL 6000798, at \*3 (N.D.Cal. Nov.30, 2012) (“simply alleging ‘on information and  
16 belief’ and representing ‘vague, conclusory, and confusing statements’ does not satisfy the  
17 requirement that the identifications be ‘as specific as possible.’”); *CSR Tech. Inc. v. Freescale*  
18 *Semiconductor, Inc.*, No. C–12–02619 RS (JSC), 2013 WL 503077, at \*7-8 (N.D. Cal. Feb. 8,  
19 2013).

20 In the meet and confer correspondence relating to this dispute, Plaintiffs’ argued that  
21 Samsung’s reliance on *CSR Technology Inc. v. Freescale Semiconductor, Inc.* is misplaced  
22 because Plaintiffs’ “provided numerous citations to public ARM documents to support its  
23 contentions.” *Wainscoat Decl.*, Ex. 7. In support of this argument, Plaintiffs cite to *France*  
24 *Telecom, S.A. v. Marvell Semiconductor, Inc.*, but that case is inapposite as it dealt with  
25 infringement allegations based upon “industry standards,” such as 3G telecommunications. Case  
26 No. 12-cv-04967-WHA, 2013 WL 1878912, at \*1 (N.D. Cal. May 3, 2013). Nowhere in  
27 Plaintiffs’ Infringement Contentions do Plaintiffs allege that infringement is based upon the  
28 practice of an “industry standard,” and therefore Plaintiffs’ failure to adequately chart the

1 Samsung accused products is not excused on such grounds.

2 Similarly, Plaintiffs' Infringement Contentions conclude that certain claim elements are  
 3 present based on the understanding of one of ordinary skill in the art. Wainscoat Decl., Ex. 3  
 4 (Infr. Cont., Exs. E-1 at 20 ('336 element 6.d); Ex. 4 (Infr. Cont., Ex. E-2 at 128 ('890 element  
 5 12.b).). Plaintiffs also cite to generic articles and Wikipedia for conclusory statements about  
 6 general technology, instead of pointing to allegedly infringing features of the accused products.  
 7 Wainscoat Decl., Ex. 3 (Infr. Cont., Ex. E-1 at 31 ('336 element 6g). Simply concluding that a  
 8 person of ordinary skill in the art could locate the element does not "provide reasonable notice to  
 9 the defendant why the plaintiff believes it has a 'reasonable chance of proving infringement'" and  
 10 does not comply with Local Patent Rule 3-1. *Shared Memory Graphics*, 812 F. Supp. 2d at 1025;  
 11 *Bender*, 2010 WL 1689465, at \*4 ("[m]erely alluding to the fact that any electrical engineer  
 12 would understand the infringement contentions is not sufficient."). In short, Plaintiffs cannot  
 13 wait for discovery before complying with their obligations under Rule 3-1; they must perform an  
 14 analysis of information reasonably available to it, which may include reverse engineering, and  
 15 disclose what instrumentality in each individual accused product allegedly practices each  
 16 limitation of every asserted claim. *See Bender v. Maxim Integrated Prods., Inc.*, C 09-01152 SI,  
 17 2010 WL 2991257, at \*2 (N.D. Cal. July 29, 2010). Plaintiffs have failed to do so and their  
 18 insufficient contentions should be stricken.

19 **B. The Infringement Contentions Improperly Accuse Products First**  
 20 **Released After Expiration Of The '890 And '749 Patents**

21 The '749 patent expired on August 8, 2012, and the '890 patent expired on June 25, 2013.  
 22 *See* Dkt. No. 1, Exs. A, B. Yet Plaintiffs contend that every one of the nearly 800 products  
 23 identified in Table A.4 is an "Accused Product" for each of the Patents-in-Suit. However, there  
 24 are numerous Samsung products listed in Table A.4 that were released after the expiration of the  
 25 '749 and '890 patents. By way of example only, Plaintiffs have accused the Samsung SMN910A  
 26 Galaxy Note 4 LTE-A (Muscat). Wainscoat Decl., Ex. 2 at p. 48. However, publicly available  
 27 information shows that this product was not released until October 2014, long after the expiration  
 28 of both the '890 and '749 patents. Wainscoat Decl., ¶ 13, Ex. 11. Had Plaintiffs conducted a

1 good faith investigation, or separately identified which Samsung products were accused for each  
2 asserted patent, they would have (and should have) easily identified numerous products that were  
3 first released after the expiration of two of asserted patents.

4 Samsung raised this issue in its March 10, 2015, deficiency letter and requested that  
5 Plaintiffs withdraw their '890 and '749 patent infringement contentions as to any Samsung  
6 product first released in the United States after the expiration of these patents. Wainscoat Decl.,  
7 Ex. 6. Notably, Plaintiffs did not (and cannot) dispute that they cannot assert infringement for  
8 use that occurred after the '749 or '890 patents expired. 35 U.S.C. § 271(1) (“[W]hoever without  
9 authority makes, uses, offers to sell, or sells any patented invention, within the United States or  
10 imports into the United States any patented invention *during the term of the patent* therefor,  
11 infringes the patent”) (emphasis added). Instead, Plaintiffs attempted to shift the burden to  
12 Samsung to identify which of the accused products post-dated the expiration of the patents.  
13 Wainscoat Decl., Ex. 7. While Plaintiffs may not have perfect knowledge of the first date of any  
14 use or sale in the United States, it is apparent that Plaintiffs made absolutely no effort to identify  
15 allegedly infringing products on a patent-by-patent basis, which would have taken into account  
16 the expiration of the '749 and '890 patent. It is improper to place this burden on Samsung in the  
17 first instance after serving a 24-page laundry list of apparently every Samsung product Plaintiffs  
18 could locate on the Internet. As noted above, Plaintiffs’ list includes nearly 800 products, and as  
19 Plaintiffs chose to accuse all of these products it was incumbent upon them to timely perform the  
20 requisite diligence. They have failed to do so, and should not be allowed leave to do so now for  
21 the first time in this case.

## 22 **V. CONCLUSION**

23 Plaintiffs’ failure to comply with Rule 3-1 is clear, and in many cases inexcusable.  
24 Plaintiffs had two and a half years to prepare their contentions, but chose to serve a single claim  
25 chart for each asserted patent that fails to analyze any one product against each asserted claim.  
26 Plaintiffs’ charts also make a mockery of established guidelines for making “representative  
27 product” allegations. Finally, Plaintiffs also had three months to seek leave to supplement these  
28 contentions after having been put on notice of their clear deficiencies, but chose to do nothing.

1 For the reasons discussed herein, Samsung respectfully requests an order from the Court striking  
2 Plaintiffs' January 20, 2015, Disclosure of Asserted Claims and Infringement Contentions in their  
3 entirety for failure to comply with Patent Local Rule 3-1.

4 In the alternative, and to the extent the Court permits Plaintiffs to serve supplemental  
5 infringement contentions, Samsung requests an order compelling amended contentions that: (a)  
6 are limited only to Samsung products previously identified in Table A.4 of Exhibit A to  
7 Plaintiffs' January 20 contentions that include one of the following processors: Qualcomm  
8 MSM7227, MSM8660 and MSM8960; TI OMAP4430, OMAP 4460, OMAP4470 and  
9 OMAP3621; or Samsung S3C6410; (b) require Plaintiff to comply with Patent Local Rule 3-1 by  
10 identifying specifically where each limitation of each asserted claim is found within each accused  
11 Samsung product, including, at a minimum, providing a separate claim chart for each of these  
12 eight accused microprocessors; (c) exclude any product for which Plaintiff does not have a good  
13 faith basis to believe was infringed in the United States during the life of the patent which it is  
14 accused of infringing; and (d) confirm that all other products not containing one of the eight  
15 processors (whether identified in Table A.4 of Exhibit A or otherwise) are excluded from the  
16 scope of this case for all purposes, including discovery, liability, damages and injunctive relief.

17 Dated: June 9, 2015

DLA PIPER LLP (US)

18  
19  
20 By: /s/ Aaron Wainscoat

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