IN THE

Supreme Court of the United States

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, Petitioners,

v.

APPLE INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF TIFFANY AND COMPANY, ADIDAS AG, AND JENNY YOO COLLECTION, INC., AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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	A. The Fashion Industry is an Important Driv of U.S. Economic Growth	
	B. Innovative Design is Critical to the Fashio	
	C. Design Pirates Cause Substantial Economicand Creative Harm to both Established an Emerging Fashion Designers	nd
	D. Design Patents are an Important Tool for Designers to Protect Their Designs	
	FURTHER LIMITING THE TOTAL PROFITS DAMAGE REMEDY WOULD HARM THE FASHION INDUSTRAND THE U.S. ECONOMY	RY
	A. The Total Profits Remedy Effective Dissuades Design Pirates	
	B. Without a Meaningful Remedy, Design Patents Cannot Create the Incentiv Necessary to "Promote the Progress of Useful Arts"	es



С.	This	Court	S	hould	Not	Ignore	the	Plain
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Other Authorities	
Biana Borukhovich, Fashion Design: The Work Of Art That Is Still Unrecognized In The United States, 9 WAKE FOREST INTELL. PROP. L.J. 155 (2009)	9
Bureau of Labor Statistics, U.S. Dep't Of Labor, Occupational Outlook Handbook: Fashion Designers (2014-2015 ed.)	3
Council of Fashion Designers of Am., CFDA Applauds Design Prohibition Act (Dec. 31, 2009)	7
Diane von Furstenberg, Fashion Deserves Copyright Protection, L.A. Times, Aug. 24,	1



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