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 13 APPLE INC.

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **OAKLAND DIVISION**

17 APPLE INC., a California corporation,
 18 Plaintiff,
 19 v.
 20 AMAZON.COM, INC., a Delaware
 21 corporation, and AMAZON DIGITAL
 22 SERVICES, INC., a Delaware corporation,
 23 Defendants.

Case No. CV 11-01327 PJH

**DECLARATION OF DAVID R.
 EBERHART IN SUPPORT OF APPLE
 INC.'S REPLY IN SUPPORT OF
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: June 22, 2011
 Time: 9:00 A.M.
 Courtroom: 3, 3rd Floor
 Judge: Hon. Phyllis J. Hamilton

1 I, David R. Eberhart, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am a partner with the law firm of O’Melveny & Myers LLP, counsel of record
3 for Plaintiff Apple Inc. (“Apple”). I submit this declaration in support of Apple’s reply in support
4 of motion for preliminary injunction against Amazon.com, Inc. and Amazon Digital Services,
5 Inc. (collectively “Amazon”).

6 2. I have reviewed certain registrations and applications made for trademarks before
7 the U.S. Patent and Trademark Office. Attached hereto as Exhibit 1 is a printout from the
8 Trademark Office’s website reflecting Amazon’s registration of its 1-CLICK WEBSTORE mark.

9 3. The Trademark Office has approved registrations for other marks that include the
10 word “store” including:

11 Trademark	Registration Number	Goods/Services
12 THE CONTAINER STORE	1,164,143	Retail store services in the area of household accessories, storage items, storage systems, and space organizers, in International Class 42.
14 WOOD STORE	2,339,880	Providing on-line retail services in the field of woodworking including woodworking tools, plans and kits, products, and related supplies and publication subscriptions via a global computer network, in International Class 35.
17 AWARDSTORE	2,659,403	Retail store services featuring plaques, trophies, laser engraved acrylic and stone, embroidery, digital screen printing, uniform creation, personalization and corporate identification programs and the like, in International Class 35.
20 SWAG STORE	3,773,696	Online retail stores and retails stores featuring a wide variety of consumer goods, including branded and non-branded commercial items and gift cards; Online retail outlet featuring digital dollars, prize money, gift certificates, and redeemable coupons for goods and services; Online retail outlet featuring marketing goods and services of others, in International Class 35.
24 THE AUTO STORE	2,562,711	Pre-owned motor vehicle dealerships, in International Class 35.
25 THE ENGAGEMENT RING STORE	2,237,873	Retail jewelry store services, in International Class 42.
27 THE GENERATOR STORE	3,367,291	Retail store services featuring electric power generators for home and industrial use, in International Class 35.
28 THE PAPER STORE	1,212,989	Retail store services, featuring paper and

1			plastic tableware, greeting cards and party and gift wrapping supplies, in International Class 42.
2			
3	THE RADIATOR STORE	3,022,200	Retail and wholesale store services featuring automotive and vehicular systems and their components, in International Class 35.
4			
5	THE SHADE STORE	3,559,896	On-line retail store services featuring window blinds, curtains, decorative window treatments and related goods, in International Class 35.
6			
7	DIGITAL MAP STORE	3,080,989	Online retail store featuring maps, map software, and GPS equipment, in International Class 35.
8			

Attached as Exhibit 2 are true and correct copies of the registration certificates for the above-listed registrations and printouts of information from the electronic database records of the United States Patent and Trademark Office showing the current status of each registration.

4. I have also reviewed the results of a search for “kindle” in active domain names on www.domaintools.com, the website that Amazon used to search for “appstore.” Those results show 6,755 active domain names with that term. Attached as Exhibit 3 is a true and correct copy of a printout of the first 3000 hits (the maximum the site appears to permit be accessed) resulting from that search.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Date: June 8, 2011

/s/ David R. Eberhart
David R. Eberhart