

1 HAROLD J. MCELHINNY (CA SBN 66781)  
 hmcclhinny@mofo.com  
 2 MICHAEL A. JACOBS (CA SBN 111664)  
 mjacobs@mofo.com  
 3 JENNIFER LEE TAYLOR (CA SBN 161368)  
 jtaylor@mofo.com  
 4 ALISON M. TUCHER (CA SBN 171363)  
 atucher@mofo.com  
 5 RICHARD S.J. HUNG (CA SBN 197425)  
 rhung@mofo.com  
 6 JASON R. BARTLETT (CA SBN 214530)  
 jasonbartlett@mofo.com  
 7 MORRISON & FOERSTER LLP  
 425 Market Street  
 8 San Francisco, California 94105-2482  
 Telephone: (415) 268-7000  
 9 Facsimile: (415) 268-7522

WILLIAM F. LEE  
 william.lee@wilmerhale.com  
 WILMER CUTLER PICKERING  
 HALE AND DORR LLP  
 60 State Street  
 Boston, MA 02109  
 Telephone: (617) 526-6000  
 Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)  
 mark.selwyn@wilmerhale.com  
 WILMER CUTLER PICKERING  
 HALE AND DORR LLP  
 950 Page Mill Road  
 Palo Alto, California 94304  
 Telephone: (650) 858-6000  
 Facsimile: (650) 858-6100

11 Attorneys for Plaintiff and  
 12 Counterclaim-Defendant APPLE INC.

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN JOSE DIVISION

17 APPLE INC., a California corporation,  
 18 Plaintiff,  
 19 v.  
 20 SAMSUNG ELECTRONICS CO., LTD., a  
 Korean corporation; SAMSUNG ELECTRONICS  
 21 AMERICA, INC., a New York corporation; and  
 SAMSUNG TELECOMMUNICATIONS  
 22 AMERICA, LLC, a Delaware limited liability  
 company,  
 23 Defendants.  
 24

Case No. 11-cv-01846-LHK (PSG)

**DECLARATION OF GRANT L. KIM  
 IN SUPPORT OF APPLE INC.'S  
 OPPOSITION TO SAMSUNG'S  
 MOTION FOR LEAVE TO SEEK  
 RECONSIDERATION OF THE  
 COURT'S MAY 21, 2012 ORDER**

1 I, GRANT KIM, declare as follows:

2 1. I am an attorney at the law firm of Morrison & Foerster LLP, counsel of record in  
3 this action for Plaintiff Apple Inc. I also appeared as counsel in Apple's appeal of this Court's  
4 preliminary injunction ruling to the Federal Circuit. I submit this declaration to authenticate  
5 certain documents filed in support of Apple's Opposition to Samsung's Motion for  
6 Reconsideration of the Court's May 21, 2012 Order. I have personal knowledge of the matters  
7 set forth below. If called as a witness I could and would testify competently as follows.

8 2. Attached as Exhibit A is a true and correct copy of portions of the Brief of  
9 Appellees that Samsung filed in the Federal Circuit appeal that are relevant to Samsung's motion  
10 for reconsideration (omitting confidential portions that are not relevant to Samsung's motion). As  
11 indicated by these excerpts, Samsung argued that this Court's finding that the Galaxy Tab 10.1  
12 likely infringes Apple's D'889 patent was erroneous, and that the Federal Circuit should affirm  
13 the denial of a preliminary injunction as to the D'889 patent on the ground that there is no likely  
14 infringement. (Ex. A at 61-63.) In the alternative, Samsung argued that the Federal Circuit  
15 should remand for further consideration of both infringement and validity to allow Samsung to  
16 present new evidence (including "more clear photos" of an unreleased tablet model), which  
17 allegedly shows that Apple's design patents are not valid or infringed. (*Id.* at 73-74.) The  
18 Federal Circuit did not accept either argument.

19 3. Attached as Exhibit B is a true and correct copy of relevant excerpts of photos of  
20 the unreleased tablet model that Samsung submitted to the Federal Circuit as part of the appellate  
21 record (A8626-43), which Samsung relied on in its appellate brief (Ex. A at 63). Samsung  
22 submitted these same photos to this Court on October 18, 2011, as Exhibit R to the Tung  
23 Declaration In Support of Samsung's Notice of Lodging of Materials In Opposition to Apple's  
24 Motion for Preliminary Injunction. These photos are not confidential because they were  
25 submitted to the Patent Office. In contrast, Samsung redacted the photo that appears at page 74 of  
26 Samsung's appellate brief from the public version of its brief, because this photo was not  
27 submitted to the Patent Office.

28

1           4.       Attached as Exhibit C is a true and correct copy of relevant excerpts of the Reply  
2 Brief of Appellant that Apple filed in the Federal Circuit appeal. As indicated by these excerpts,  
3 Apple noted that the photos of the unreleased tablet model were not relevant to the scope of the  
4 D'889 patent because the Examiner excluded the photos by cancelling the statement in the patent  
5 application that referred to these photos.

6           5.       Attached as Exhibit D is a true and correct copy of relevant excerpts of the D'889  
7 prosecution history, which are included in the Federal Circuit appellate record. As indicated by  
8 these excerpts, Apple's application for the D'889 patent referred to "an appendix showing various  
9 photographs of an electronic device in accordance with one embodiment." (A9245.) The  
10 Examiner responded by cancelling this statement as improper. (A9280-81.) Accordingly, this  
11 statement does not appear in the D'889 patent, as finally issued.

12           I declare under the penalty of perjury that the foregoing is true and correct and that  
13 this Declaration was executed this 4th day of June 2012, at San Francisco, California.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*/s/ Grant L. Kim*  
\_\_\_\_\_  
Grant L. Kim

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

**ATTESTATION OF E-FILED SIGNATURE**

I, Michael A. Jacobs, am the ECF User whose ID and password are being used to file this Declaration. In compliance with General Order 45, X.B., I hereby attest that Grant L. Kim has concurred in this filing.

Dated: June 4, 2012

\_\_\_\_\_  
*/s/ Michael A. Jacobs*  
Michael A. Jacobs