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 11 Attorneys for Plaintiff and  
 Counterclaim-Defendant APPLE INC.

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

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

Case No. 11-cv-01846-LHK (PSG)  
  
**REPLY DECLARATION OF  
 ESTHER KIM IN SUPPORT OF  
 APPLE'S MOTION FOR ADVERSE  
 INFERENCE JURY  
 INSTRUCTIONS DUE TO  
 SAMSUNG'S SPOILIATION OF  
 EVIDENCE**  
  
 Date: June 21, 2012  
 Time: 10:00 a.m.  
 Place: Courtroom 5, 4th Floor  
 Judge: Hon. Paul S. Grewal

24  
 25 **PUBLIC REDACTED VERSION**  
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1 I, Esther Kim, declare as follows:

2 1. I am an associate with the law firm of Morrison & Foerster LLP, counsel for  
3 Apple Inc. (“Apple”). I am licensed to practice law in the State of California and admitted to  
4 practice before this Court. Unless otherwise indicated, I have personal knowledge of the matters  
5 stated herein or understand them to be true from other members of my litigation team. I make  
6 this declaration in support of Apple’s Motion for Adverse Inference Jury Instructions Due to  
7 Samsung’s Spoliation of Evidence.

8 2. Certain exhibits to this declaration consist of Korean-language documents  
9 produced by Samsung in this action. Apple has obtained certified translations of the documents  
10 and submits those translations herewith along with each Korean original.

11 3. Pursuant to the Court’s September 28, 2011, Order (Dkt. No. 267), Samsung  
12 served its first Identification of Custodians, Litigation Hold Notices and Search Terms  
13 (“transparency disclosures”) on October 7, 2011. Attached hereto as **Exhibit 1** is a true and  
14 correct copy of the October 7, 2011, disclosures and relevant accompanying exhibits,  
15 *i.e.*, Exhibits S, T, and U.

16 4. Samsung subsequently amended or supplemented its transparency disclosures four  
17 times, serving them on October 10, 2011, December 1, 2011, February 26, 2012, and most  
18 recently, on May 27, 2012. [REDACTED]

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 5. Attached hereto as **Exhibit 2** is a true and correct copy of Samsung’s transparency  
23 disclosures served on October 10, 2011, titled “Samsung’s Amended Identification of Custodians,  
24 Litigation Hold Notices and Search Terms.” The only exhibit amended in these disclosures was  
25 Exhibit V, which is not relevant here. Accordingly, Exhibits S, T, and U remain the same as the  
26 October 7, 2011, disclosures.

27 6. Attached hereto as **Exhibit 3** is a true and correct copy of the transparency  
28 disclosures served on December 1, 2011, titled “Samsung’s First Amended and Supplemental

1 Identification of Custodians, Litigation Hold Notices and Search Terms,” and relevant  
2 accompanying exhibits, *i.e.*, Exhibits S, T, and U.

3 7. Attached hereto as **Exhibit 4** are two summary charts titled [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 8. [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 Attached hereto as **Exhibit 5** is a chart summarizing  
10 more than 550 of the documents from the May 26, 2012, production [REDACTED]  
11 [REDACTED]

12 9. Apple sent three letters to Samsung on January 29, 2012, February 21, 2012, and  
13 February 29, 2012, asking Samsung to confirm whether it was [REDACTED]

14 [REDACTED] Attached hereto as **Exhibit 6** is a true and correct copy of the letter from Apple’s  
15 counsel Marc Pernick to Samsung’s counsel Rachel Kassabian, dated January 29, 2012,  
16 requesting this information. Attached hereto as **Exhibit 7** is a true and correct copy of the second  
17 letter from Mr. Pernick to Ms. Kassabian, dated February 21, 2012, again requesting this  
18 information. Attached hereto as **Exhibit 8** is a true and correct copy of the third letter from  
19 Mr. Pernick to Ms. Kassabian, dated February 29, 2012, repeating this request.

20 10. Samsung finally responded to Apple’s multiple requests by definitively answering,  
21 [REDACTED]

22 Attached hereto as **Exhibit 9** is a true  
23 and correct copy of the letter from Samsung’s counsel Alex Binder to Marc Pernick, dated  
24 February 29, 2012, confirming that Samsung was not [REDACTED]  
25 [REDACTED]

26 11. Attached hereto as **Exhibit 10** is a true and correct copy of the document produced  
27 by Samsung beginning with Bates number SAMNDCA00044700, which is an email dated  
28 February 16, 2012, [REDACTED]  
[REDACTED]

[REDACTED] A true and correct copy of a certified translation is included.

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12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the transcript of the deposition of Dong Sub Kim taken on February 28, 2012.

13. Under my supervision, contract attorneys for Morrison & Foerster reviewed the emails authored or received by [REDACTED] that were produced from the files of other custodians—documents produced in this action, as well as documents produced in the matter of *Certain Electronic Digital Media Devices and Components Thereof*, Investigation No. 337-TA-796, pending in the International Trade Commission. Samsung asserts that it produced [REDACTED]. However, Morrison & Foerster’s contract attorneys discovered more than [REDACTED]. [REDACTED] Of these, more than [REDACTED]. [REDACTED]

I declare under penalty of perjury that the foregoing is true and correct. Executed June 5, 2012, at San Francisco, California.

/s/ Esther Kim  
Esther Kim

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**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 Esther Kim has concurred in this filing.

Dated: June 5, 2012

/s/ Michael A. Jacobs  
Michael A. Jacobs