

1 Timothy T. Scott (State Bar No. 126971)
 2 tscott@kslaw.com
 3 Geoffrey M. Ezgar (State Bar No. 184243)
 4 gezgar@kslaw.com
 5 Leo Spooner, III (State Bar No. 241541)
 6 lspooneer@kslaw.com
 7 KING & SPALDING LLP
 8 333 Twin Dolphin Drive, Suite 400
 9 Redwood Shores, CA 94065
 10 Telephone: +1 650 590 0700
 11 Facsimile: +1 650 590 1900

12 Attorneys for Non-Party
 13 INTERNATIONAL BUSINESS MACHINES CORPORATION

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
 21 Korean corporation; SAMSUNG
 22 ELECTRONICS AMERICA, INC., a New
 23 York corporation; and SAMSUNG
 24 TELECOMMUNICATIONS AMERICA,
 25 LLC, a Delaware limited liability company,
 26 Defendants.

CASE NO. 11-CV-01846-LHK (PSG)

DECLARATION OF KENNETH S. KING

27 1. I make this declaration based on my personal knowledge of the facts
 28 described below.

29 2. I am the General Manager, Intellectual Property, and Vice President,
 30 Research Business Development, at International Business Machines Corporation ("IBM"). In
 31 this role, I am responsible for IBM's corporate Intellectual Property licensing and assignment
 32 program.

1 3. IBM has had for decades and continues to have an active and substantial
2 program of licensing and selling patents and other types of Intellectual Property. Such program
3 includes entering into patent cross license agreements with third parties, under which each party
4 grants to the other licenses under its patent portfolio as it relates to the other party's business
5 activities. Often such cross licenses will include a "balancing payment" from one party to the
6 other to account for differences in the size and relevance of the respective patent portfolios.

7 4. In the industry, the balancing payment in a cross license agreement may be
8 based on a number of factors, which may include: the breadth of the licenses granted; the size,
9 strength and age of the respective patent portfolios; the relevant product and service revenue of
10 the parties; and the extent to which the parties may already have patent coverage. IBM's
11 particular pricing methodology for computing the balancing payments, which including the exact
12 factors IBM relies upon and how it weights those factors, is trade secret information.

13 5. Public disclosure of the amount of payments under IBM's license
14 agreements would negatively impact IBM in future license and settlement negotiations by giving
15 potential licensees the ability to derive IBM's secret methodology for determining balancing
16 payments. The amount of the balancing payment in a particular agreement, such as the 2010
17 IBM-Samsung Patent License Agreement, is a significant data point towards reverse engineering
18 IBM's pricing methodology. Competitors and potential counterparties to licensing and settlement
19 agreements would gain an unfair insight into IBM's analyses, particularly as IBM would know
20 nothing about their methodology for the negotiations. Using their knowledge of the precise
21 substantive and financial terms of previously nonpublic agreements, this unfair advantage would
22 allow them to calibrate their negotiation strategies to the detriment of IBM.

23 6. The 2010 IBM-Samsung Patent License Agreement requires the parties to
24 maintain the confidentiality of its terms, and IBM relies upon that confidentiality obligation to
25 protect its sensitive corporate information. For the reasons stated above, the public disclosure of
26 the commercially sensitive balancing payment amounts specified in that agreement would harm
27 to IBM's patent licensing business.

28

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

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

DATED: July 26, 2012

By: 
KENNETH S. KING