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Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

15 APPLE INC., a California corporation,
 16
 Plaintiff,
 17
 v.
 18 SAMSUNG ELECTRONICS CO., LTD., A
 19 Korean business entity; SAMSUNG
 20 ELECTRONICS AMERICA, INC., a New York
 corporation; SAMSUNG
 21 TELECOMMUNICATIONS AMERICA, LLC, a
 Delaware limited liability company.,
 22
 Defendants.

Case No. 11-cv-01846-LHK

**DECLARATION OF JASON R.
 BARTLETT IN SUPPORT OF
 APPLE'S MOTION TO COMPEL
 SAMSUNG TO PRODUCE
 DOCUMENTS AND PROVIDE
 RESPONSIVE ANSWERS TO
 PROPOUNDED DISCOVERY**

Date: October 25, 2011
 Time: 10:00 am
 Courtroom: 5, 4th Floor
 Honorable Paul S. Grewal

24 **PUBLIC VERSION**
 25 **EXHIBIT J FILED UNDER SEAL**
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 27
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1 I, Jason R. Bartlett, declare as follows:

2 1. I am an attorney with the law firm of Morrison & Foerster LLP, counsel for Apple
3 Inc. (“Apple”). I am licensed to practice law in the State of California. Unless otherwise
4 indicated, I have personal knowledge of the matters stated herein and, if called as a witness, could
5 and would testify competently thereto. I make this declaration in support of Apple’s Motion to
6 Compel Samsung to Produce Documents and Provide Response Answers to Propounded
7 Discovery.

8 2. In a letter dated July 1, 2011, through counsel, Apple reminded Samsung of its
9 obligations to preserve documents and electronic evidence during the course of litigation, citing
10 Samsung’s demonstrated inability to preserve such materials in previous actions as the impetus
11 for the letter. Within the letter, specific instances of previous misconduct were cited from various
12 cases, including “*Fractus, S.A. v. Samsung Elecs. Co.*, Case No. 09-cv-203 (E.D. Tex.) (trial
13 transcript referring to Samsung’s continued policy of deleting electronic mail every two weeks,
14 even after lawsuit filed).” A true and correct copy of this July 1 letter is attached hereto as
15 Exhibit A.

16 3. On July 12, 2011, Apple propounded to Samsung a single interrogatory in an effort
17 to obtain discovery narrowly tailored to Apple’s request for a preliminary injunction filed with
18 the Court on July 1, 2011. Attached hereto as Exhibit B is a true and correct copy of Apple Inc.’s
19 Interrogatories to Defendants Relating to Apple’s Motion for a Preliminary Injunction – Set One.

20 4. On that same day, Apple propounded to Samsung a number of requests for
21 production, again to obtain discovery narrowly tailored to Apple’s request for a preliminary
22 injunction. Attached hereto as Exhibit C is a true and correct copy of Apple Inc.’s Requests for
23 Production of Documents and Things Relating to Apple’s Motion for a Preliminary Injunction –
24 Set One.

25 5. Prior to the Court-imposed deadline by which Apple had to complete its service of
26 motion-related discovery, Apple propounded a second set of requests for production to Samsung.
27 Attached hereto as Exhibit D is a true and correct copy of Apple Inc.’s Requests for Production of
28

1 Documents and Things Relating to Apple's Motion for a Preliminary Injunction – Set Two,
2 served on August 26, 2011.

3 6. Samsung responded to Apple's requests for production on August 31, 2011.
4 Attached hereto as Exhibit E is a true and correct copy of Samsung's Objections and Responses
5 to Apple's Requests for Production of Documents and Things Relating to Apple's Motion for a
6 Preliminary Injunction – Sets One (Nos. 1-8) and Two (Nos. 155-217).

7 7. Also on August 31, 2011, Samsung objected, but did not respond, to Apple's
8 Interrogatory No. 1. Attached hereto as Exhibit F is a true and correct copy of Samsung's
9 Objections to Apple's Interrogatories to Defendants Relating to Apple's Motion for a Preliminary
10 Injunction – Sets One (No. 1) and Two (Nos. 10-14).

11 8. On September 1, 2011, less than 24 hours after receiving Samsung's objections
12 and responses, I sent an email to Ms. Melissa Chan, counsel for Samsung, to request a meeting to
13 confer with counsel in order to address certain discovery related issues. A call was set for
14 September 2, 2011.

15 9. On September 2, 2011, counsel for both parties held a lengthy call during which
16 Samsung, through counsel, agreed to investigate a number of issues raised by Apple. On
17 September 7, 2011, I sent a letter to Ms. Chan confirming the compromises reached by the parties
18 stemming from the September 2 teleconference and providing proposals and clarifications
19 requested by Samsung. A true and correct copy of that letter is attached hereto as Exhibit G.

20 10. Two days later, Samsung responded to my letter of September 7. A true and
21 correct copy of Samsung's response letter of September 9, 2011 is attached hereto as Exhibit H.

22 11. In response to Samsung's positions, I sent on that same day an email to Ms.
23 Victoria Maroulis, counsel for Samsung, to request an in-person meeting to address the parties'
24 disagreements with respect to various discovery issues. My request was to meet in person in the
25 offices of Samsung's counsel on Monday, September 12. That request was refused. On
26 September 13, 2011, I again asked Samsung's counsel to meet with counsel for Apple at the
27 former's offices, and again was refused.
28

1 12. On September 14, 2011, counsel for both parties participated in another
2 teleconference to address several discovery related issues. I thereafter sent a letter addressed to
3 Ms. Rachel Herrick Kassabian and Ms. Chan, counsel for Samsung, to memorialize the
4 conversations had during that call. A true and correct copy of that letter is attached hereto as
5 Exhibit I. In that letter, another request for an in-person meeting was presented. That request
6 was also refused.

7 13. At approximately 10 p.m. on Wednesday, September 14, 2011, after the several
8 requests to meet in person were either ignored or refused, I sent an email to Ms. Kassabian
9 informing her that Apple would request the Court's assistance to intervene. Shortly thereafter,
10 counsel for Samsung agreed to meet in person with Apple's counsel in the Palo Alto offices of
11 Morrison & Foerster LLP on Friday, September 16.

12 14. Counsel for both parties met as scheduled on that Friday but were unable to
13 resolve their disputes. For instance, Samsung had previously represented that it had produced
14 "any responsive documents that might exist, after a reasonable search" in response to Apple's
15 Request for Production No. 1. Samsung also confirmed during the meeting of September 16 that
16 its objections purporting to exclude from its production documents relating to irrelevant
17 "functionalities" and "geographies" were not a basis for Samsung to omit relevant design
18 documents from the production. When Apple asked a series of questions about the scope of
19 Samsung's document collection to clarify potential inconsistencies in those positions, however,
20 Samsung would not or could not answer those questions. Further, when asked why its production
21 to date was comprised of only about 13 percent of documents written in Korean, why there was
22 not a single notebook or sketch from a Samsung designer, why there were only about 35 e-mails
23 in the entirety of the production (none originating from Samsung designers), and why there were
24 almost no documents regarding Apple products, Samsung had no explanation at all. Instead,
25 Samsung protested that Apple was incorrectly "assuming such documents actually do exist."
26 These and other issues were memorialized in a letter I sent to Ms. Chan on September 20, 2011.
27 A true and correct copy of this letter is attached hereto as Exhibit J.
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