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11 Attorneys for Plaintiff and
12 Counterclaim-Defendant APPLE INC

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

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

Case No. 11-cv-01846-LHK

**DECLARATION OF ERIK J. OLSON
IN OPPOSITION TO SAMSUNG'S
MOTION TO COMPEL APPLE TO
PRODUCE DOCUMENTS AND
THINGS**

Date: November 1, 2011
Time: 3:00 p.m.
Place: Courtroom 5, 4th Floor
Judge: Hon. Paul S. Grewal

REDACTED

1 I, Erik J. Olson, declare as follows:

2 1. I am a partner at Morrison & Foerster LLP. The facts set forth in this declaration
3 are personally known to me to be true and, if called upon to testify as to the matters contained
4 herein, I could and would competently testify thereto.

5 2. Samsung's Motion to Compel Apple to Produce Documents and Things concerns
6 issues that Samsung could have resolved earlier, and Apple has never opposed production of the
7 materials sought.

8 3. Apple asserted that Samsung infringed U.S. Design Patent No. 504,889 (the
9 "D'889 patent") in its amended complaint filed on June 16, 2011. Based on its face sheet, the
10 D'889 patent issued on May 10, 2005 based on an application filed on March 17, 2004.

11 4. On July 22, 2011, Apple Inc. ("Apple") produced the file history for the "D'889
12 patent" at Bates range APLNDC00001281-1395. Apple produced another copy of the D'889 file
13 history on August 24, 2011 at Bates range APLNDC00030805-30914. Both of those copies of
14 the file history contained fuzzy reproductions of the photographs of a tablet model.

15 5.  A large rectangular area of the document is completely redacted with a solid black fill, covering approximately five lines of text.

23 6. Samsung first raised the issue of the models and photographs on October 12, 2011,
24 months after the file histories were produced and two weeks after the images from Sterne Kessler
25 were produced (Declaration of Anna Neill In Support of Samsung's Motion to Shorten Time for
26 Briefing and Hearing and Samsung's Motion to Compel Apple to Produce Documents and Things
27 ("Neill Decl.," filed with Samsung's motion) Ex. C.)

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10. Attached hereto as Exhibit 4 is a true and correct copy of a letter from Marissa Ducca, counsel for Samsung, and Mia Mazza, counsel for Apple, dated October 25, 2011.

11. Attached hereto as Exhibit 5 is a true and correct copy of a letter from Mia Mazza, counsel for Apple, to Rachel Kassabian, counsel for Samsung, dated October 25, 2011.

12. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the transcript of the October 25, 2011 deposition of Quin Hoellwarth.

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14. On November 17, 2004, the patent examiner issued a “Notice of Allowability” with respect to the application that became the D’889 patent. While the office action makes repeated reference to the drawings in the application, the examiner makes no reference to any photographs or pictures. A true and correct copy of the office action obtained from the files of the patent office, produced at Bates range APLNDC00030883-30888, is attached as Exhibit 7.

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17. A true and correct copy of an excerpt from the transcript of the September 28, 2011 hearing in this case is attached as Exhibit 9.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of October, 2011 at Palo Alto, California.

/s/ Erik J. Olson
Erik J. Olson

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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 Erik J. Olson has concurred in this filing.

Dated: October 31, 2011

/s/ Michael A. Jacobs
Michael A. Jacobs