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Attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., A
Korean business entity; SAMSUNG
ELECTRONICS AMERICA, INC., a New York
corporation; SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC, a
Delaware limited liability company.,

Defendants.

Case No. 11-cv-01846-LHK

**DECLARATION OF ESTHER KIM
IN SUPPORT OF APPLE'S
OPPOSITION TO SAMSUNG'S
MOTION TO PERMIT
SAMSUNG'S EXPERT ITAY
SHERMAN TO REVIEW DESIGN
MATERIALS DESIGNATED
UNDER THE PROTECTIVE
ORDER**

PUBLIC VERSION
EXHIBITS 3, 4, 5, AND 6 FILED UNDER SEAL

1 I, Esther Kim, declare as follows:

2 1. I am an attorney 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. 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 Opposition
6 to Samsung’s Motion to Permit Samsung’s Expert Itay Sherman to Review Design Materials
7 Designated Under the Protective Order.

8 2. Attached hereto as **Exhibit 1** is a true and correct copy of the “About us” page
9 from the Double Touch website, having the universal resource locator (“URL”):
10 <http://dotwo-tech.com/index.html>.

11 3. Attached hereto as **Exhibit 2** is a true and correct copy of the published patent
12 application having U.S. Publication Number 2011-0193819 A1 and a publication date of
13 August 11, 2011. This publication is titled “Implementation of Multi-Touch Gestures Using a
14 Resistive Touch Display” and lists Itay Sherman as the first named inventor.

15 4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of the
16 deposition transcript from the deposition of Itay Sherman on September 15, 2011.

17 5. Attached hereto as **Exhibit 4** is a true and correct copy of a September 6, 2011,
18 letter from Samsung’s counsel to Apple’s counsel, disclosing Itay Sherman as an expert. The
19 letter requests that Apple inform Samsung by September 9 “whether Apple objects, and the
20 grounds for such objection, to the disclosure to Itay Sherman of information produced in this
21 litigation by Apple” and designated by Apple as “Confidential” or “Highly Confidential –
22 Attorneys’ Eyes Only” under the Interim Model Protective Order.

23 6. Attached hereto as **Exhibit 5** is a true and correct copy of an e-mail chain
24 containing four e-mails between Samsung’s counsel and Apple’s counsel from
25 September 6, 7, and 19, 2011, discussing the disclosure of Apple confidential information to
26 Mr. Sherman.

27 7. Attached hereto as **Exhibit 6** is a true and correct copy of an October 25, 2011,
28 letter from Samsung’s counsel to Apple’s counsel, documenting Apple’s objection to

1 Mr. Sherman being shown any confidential documents unless Samsung first provides a list of
2 Bates numbers so that Apple can review them and object” and Samsung’s refusal to do so.

3 8. Attached hereto as **Exhibit 7** is a true and correct copy of Samsung’s First Set of
4 Requests for Production to Apple, Inc., dated August 3, 2011. Request No. 139 states: “All
5 DOCUMENTS relating to the functionality—including the ease of manufacturing, costs savings,
6 enhanced usability, or any other benefit—of any claimed feature, element, or combination of
7 elements in any of the APPLE DESIGN PATENTS, APPLE TRADE DRESS, AND APPLE
8 TRADEMARKS.”

9 9. Attached hereto as **Exhibit 8** is a true and correct copy of the “Technology” page
10 from the Double Touch website, having the URL: <http://dotwo-tech.com/index.html>.

11 10. Attached hereto as **Exhibit 9** is a true and correct copy of a Technology Review
12 article published by M.I.T. and dated Thursday, February 14, 2003. This article is titled
13 “Rethinking the Cell Phone” and indicates that Modu intended to compete with Apple’s iPhone.
14 The article can be found at the URL:
15 http://www.technologyreview.com/printer_friendly_article.aspx?id=20276.

16
17 I declare under penalty of perjury that the foregoing is true and correct. Executed this
18 15th day of December, 2011 at San Francisco, California.

19 */s/ Esther Kim*
20 Esther Kim

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ATTESTATION OF E-FILED SIGNATURE

I, Richard S.J. Hung, 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: December 15, 2011

/s/ Richard S.J. Hung
Richard S.J. Hung