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 CO., LTD., SAMSUNG ELECTRONICS
 14 AMERICA, INC. and SAMSUNG
 TELECOMMUNICATIONS AMERICA, LLC
 15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

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

24 Defendants.
 25

CASE NO. 11-cv-01846-LHK

**DECLARATION OF TODD M. BRIGGS
 IN SUPPORT OF SAMSUNG'S MOTION
 TO COMPEL APPLE TO PRODUCE
 RECIPROCAL EXPEDITED
 DISCOVERY AND UNOPPOSED CIVIL
 L.R. 6-3 MOTION TO SHORTEN TIME**

1 I, Todd M. Briggs, declare:

2 1. I am a partner in the law firm of Quinn Emanuel Urquhart & Sullivan, LLP,
3 counsel for Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung
4 Telecommunications America, LLC (collectively "Samsung"). I have personal knowledge of the
5 facts set forth in this declaration and, if called upon as a witness, I could and would testify to such
6 facts under oath.

7 **Exhibits**

8 2. Attached hereto as **Exhibit 1** is a true and correct copy of a report entitled "Today
9 in Tech: Why the iPad 3 is one to watch, Verizon killing unlimited data." This copy of this
10 report was printed on May 25, 2011 from the website of *CNN Money* at the following website
11 address: [http://tech.fortune.cnn.com/2011/03/02/today-in-tech-why-the-ipad-3-yes-3-is-the-one-to-](http://tech.fortune.cnn.com/2011/03/02/today-in-tech-why-the-ipad-3-yes-3-is-the-one-to-watch/)
12 [watch/](http://tech.fortune.cnn.com/2011/03/02/today-in-tech-why-the-ipad-3-yes-3-is-the-one-to-watch/).

13 3. Attached hereto as **Exhibit 2** is a true and correct copy of a report entitled "Apple:
14 Analyst Says No LTE in iPhone 5; To Add Sprint, T-Mobile." This copy of this report was
15 printed on May 25, 2011 from the website of *Forbes* at the following website address:
16 [http://blogs.forbes.com/ericsavitz/2011/05/13/apple-analyst-says-no-lte-in-iphone-5-to-add-sprint-](http://blogs.forbes.com/ericsavitz/2011/05/13/apple-analyst-says-no-lte-in-iphone-5-to-add-sprint-t-mobile/)
17 [t-mobile/](http://blogs.forbes.com/ericsavitz/2011/05/13/apple-analyst-says-no-lte-in-iphone-5-to-add-sprint-t-mobile/).

18 4. Attached hereto as **Exhibit 3** is a true and correct copy of a report entitled "Apple
19 Presents iPhone 4." This copy of this report was printed on May 25, 2011 from the website of
20 *Apple* at the following website address: <http://www.apple.com/pr/library/2010/06/07iphone.html>.

21 5. Attached hereto as **Exhibit 4** is a true and correct copy of a report entitled "Apple
22 Announces the New iPhone 3GS—The Fastest, Most Powerful iPhone Yet." This copy of this
23 report was printed on May 25, 2011 from the website of *Apple* at the following website address:
24 <http://www.apple.com/pr/library/2009/06/08iphone.html>.

25 6. Attached hereto as **Exhibit 5** is a true and correct copy of a report entitled "Apple
26 Introduces the New iPhone 3G." This copy of this report was printed on May 25, 2011 from the
27 website of *Apple* at the following website address:
28 <http://www.apple.com/pr/library/2008/06/09iphone.html>.

1 7. Attached hereto as **Exhibit 6** is a true and correct copy of a report entitled "iPhone
2 Premieres This Friday Night at Apple Retail Stores." This copy of this report was printed on
3 May 25, 2011 from the website of *Apple* at the following website address:

4 <http://www.apple.com/pr/library/2007/06/28iphone.html>.

5 8. Attached hereto as **Exhibit 7** is a true and correct copy of a report entitled "Apple
6 Launches iPad 2." This copy of this report was printed on May 25, 2011 from the website of
7 *Apple* at the following website address: <http://www.apple.com/pr/library/2011/03/02ipad.html>.

8 9. Attached hereto as **Exhibit 8** is a true and correct copy of a report entitled "Apple
9 Launches iPad." This copy of this report was printed on May 25, 2011 from the website of *Apple*
10 at the following website address: <http://www.apple.com/pr/library/2010/01/27ipad.html>.

11 10. Attached hereto as **Exhibit 9** is a true and correct copy of a report entitled "Apple
12 Discontinues Sale of iPhone 3G Model Ahead of Conference." This copy of this report was
13 printed on May 25, 2011 from the website of *Bloomberg Businessweek* at the following website
14 address: [http://www.businessweek.com/news/2010-06-04/apple-discontinues-sale-of-iphone-3g-
15 model-ahead-of-conference.html](http://www.businessweek.com/news/2010-06-04/apple-discontinues-sale-of-iphone-3g-model-ahead-of-conference.html).

16 11. Attached hereto as **Exhibit 10** is a true and correct copy of a letter sent on May 16,
17 2011 from Victoria F. Maroulis, of Quinn Emanuel Urquhart & Sullivan, LLP, Samsung's counsel,
18 to the attention of Jason R. Bartlett, of Morrison and Foerster LLP, Apple's counsel.

19 12. Attached hereto as **Exhibit 11** is a true and correct copy of a letter sent on May 19,
20 2011 from Victoria F. Maroulis, of Quinn Emanuel Urquhart & Sullivan, LLP, Samsung's counsel,
21 to the attention of Jason R. Bartlett, of Morrison and Foerster LLP, Apple's counsel.

22 13. Attached hereto as **Exhibit 12** is a true and correct copy of a letter sent on May 20,
23 2011 from Jason R. Bartlett, of Morrison and Foerster LLP, Apple's counsel, to the attention of
24 Victoria F. Maroulis, of Quinn Emanuel Urquhart & Sullivan, LLP, Samsung's counsel.

25 14. Attached hereto as **Exhibit 13** is a true and correct copy of a letter sent on May 24,
26 2011 from Jason R. Bartlett, of Morrison and Foerster LLP, Apple's counsel, to the attention of
27 Todd Briggs, of Quinn Emanuel Urquhart & Sullivan, LLP, Samsung's counsel.

28

1 15. Attached hereto as **Exhibit 14** is a true and correct copy of a report entitled "First
2 Gen iPhone Shortage Hits NYC." This copy of this report was printed on May 25, 2011 from the
3 website of *Gizmodo* at the following website address: [http://ca.gizmodo.com/388517/first-gen-](http://ca.gizmodo.com/388517/first-gen-iphone-shortage-hits-nyc)
4 [iphone-shortage-hits-nyc](http://ca.gizmodo.com/388517/first-gen-iphone-shortage-hits-nyc).

5 16. Attached hereto as **Exhibit 15** is a true and correct copy of a report entitled "iPhone
6 is 'unavailable' in UK and US Apple stores; 3G release imminent?" This copy of this report was
7 printed on May 25, 2011 from the website of *TUAW* at the following website address:
8 <http://www.tuaw.com/2008/05/10/iphone-is-unavailable-in-uk-and-us-apple-stores-3g-release-im/>.

9 17. Attached hereto as **Exhibit 16** is a true and correct copy of a report entitled "Apple
10 halts online iPhone sales, stores out of stock." This copy of this report was printed on May 25,
11 2011 from the website of *MobileCrunch* at the following website address:
12 <http://www.mobilecrunch.com/2008/05/11/apple-halts-online-iphone-sales-stores-out-of-stock/>.

13 18. Attached hereto as **Exhibit 17** is a true and correct copy of a report entitled "No
14 More iPhones at Apple Store – 3G Imminent?" This copy of this report was printed on May 25,
15 2011 from the website of *TechCrunch* at the following website address:
16 <http://techcrunch.com/2008/05/11/no-more-iphones-at-apple-store-3g-imminent/>.

17 19. Attached hereto as **Exhibit 18** is a true and correct copy of a report entitled
18 "Today's sign that the 3G iPhone is nigh." This copy of this report was printed on May 25, 2011
19 from the website of *CNET* at the following website address: [http://news.cnet.com/8301-13579_3-](http://news.cnet.com/8301-13579_3-9941728-37.html?tag=mncol;txt)
20 [9941728-37.html?tag=mncol;txt](http://news.cnet.com/8301-13579_3-9941728-37.html?tag=mncol;txt).

21 20. Attached hereto as **Exhibit 19** is a true and correct copy of a report entitled "Apple
22 Countersues Nokia." This copy of this report was printed on May 26, 2011 from the website of
23 *Apple* at the following website address:
24 <http://www.apple.com/pr/library/2009/12/11countersue.html>

25 21. Attached hereto as **Exhibit 20** is a true and correct copy of a report entitled "Apple
26 Sues HTC for Patent Infringement." This copy of this report was printed on May 26, 2011 from
27 the website of *Apple* at the following website address:
28 <http://www.apple.com/pr/library/2010/03/02patents.html>.

1 22. Attached hereto as **Exhibit 21** is a true and correct copy of a page found on the
2 website of *Palm*. This copy was printed on May 26, 2011 and can be found by visiting the
3 following website address and clicking on the tab entitled "webOS":
4 <http://www.palm.com/us/products/phones/pre/index.html>.

5 23. Attached hereto as **Exhibit 22** is a true and correct copy of a page found on the
6 website of *RIM*. This copy was printed on May 26, 2011 from the following website address:
7 <http://us.blackberry.com/smartphones/blackberrystorm/>.

8 24. Attached hereto as **Exhibit 23** is a true and correct copy of a page found on the
9 website of *LG*. This copy was printed on May 26, 2011 and can be found by visiting the
10 following website address and clicking on the tab entitled "Gallery":
11 <http://www.lg.com/us/mobile-phones/LG-LGAS740.jsp>.

12 25. Attached hereto as **Exhibit 24** is a true and correct copy of a page found on the
13 website of *Motorola*. This copy was printed on May 26, 2011 from the following website
14 address: [http://www.motorola.com/Consumers/US-EN/Consumer-Product-and-Services/Mobile-
15 Phones/Motorola-ATRIX-US-EN](http://www.motorola.com/Consumers/US-EN/Consumer-Product-and-Services/Mobile-Phones/Motorola-ATRIX-US-EN).

16 26. Attached hereto as **Exhibit 25** is a true and correct copy of page found on the
17 website of *Sony Ericsson*. This copy was printed on May 26, 2011 from the following website
18 address: <http://www.sonyericsson.com/play/main.aspx?cc=us&lc=en#screen-1>.

19 27. Attached hereto as **Exhibit 26** is a true and correct copy of a still image from an
20 animation found on the website of *Nokia*. This copy was printed on May 26, 2011 and can be
21 found by visiting the following website address and clicking on the second blinking button from
22 the top of the phone entitled "3.2" Touch Screen Display":
23 http://www.nokia.com/NOKIA_COM_1/Microsites/Nokia_5800_XpressMusic/#/touch/.

24 28. Attached hereto as **Exhibit 27** is a true and correct copy of an email chain between
25 Erik Olson, an associate at Quinn Emanuel Urquhart & Sullivan, LLP, counsel to Samsung, and
26 Jason Bartlett of Morrison and Foerster LLP, dated May 26, 2011 and May 27, 2011.

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1 29. Attached hereto as **Exhibit 28** is a true and correct copy of excerpts from a
2 Transcript of Proceedings Before the Honorable Lucy H. Koh, United States District Judge, in
3 Apple Inc. v. Samsung Electronics Co., et al., No. C-11-01846-LHK (N.D. Cal.) (May 12, 2011).

4 **Parties' Conference Concerning Discovery Dispute**

5 30. On May 16, 2011, my partner, Victoria F. Maroulis, sent a letter to counsel for
6 Apple, Inc. ("Apple") that set forth reciprocal discovery that Samsung requests from Apple.

7 31. Not having heard back from Apple, on May 19, 2011, Ms. Maroulis sent another
8 letter to counsel for Apple, asking that Apple inform Samsung by the end of the week whether
9 Apple would produce the discovery Samsung requested.

10 32. On May 20, 2011, Jason R. Bartlett, of Morrison & Foerster LLP, counsel for
11 Apple, sent Ms. Maroulis a letter informing her that Apple rejected the discovery requests set forth
12 in Ms. Maroulis' May 16 letter.

13 33. On May 23, 2011, I conducted a teleconference with Mr. Bartlett and Grant L. Kim,
14 also of Morrison & Foerster LLP. My associate, Erik C. Olson, was also on the call. During
15 the teleconference, I explained to counsel for Apple why Samsung needed the discovery requested
16 in Ms. Maroulis' letter of May 16. Specifically, I explained that the requested discovery was
17 relevant to an analysis of whether there will be a likelihood of confusion between Apple's future
18 products and Samsung's future products. I asked counsel for Apple whether Apple would
19 withdraw its rejection of Samsung's discovery requests in light of our discussion. Counsel for
20 Apple said they would confer with Apple and get back to us with Apple's response the following
21 day.

22 34. On May 24, 2011, Mr. Bartlett sent me a letter informing me that Apple maintained
23 its refusal to produce the discovery requested in Ms. Maroulis' May 16 letter.

24 **Samsung's Civil L.R. 6-3 Motion to Shorten Time For Briefing and Hearing Schedule**

25 **Reasons for the Request**

26 35. On May 18, 2011, the Court issued a written order granting Apple limited
27 expedited discovery of Samsung's future products, including Samsung's production to Apple of
28

1 “[t]he latest iteration of product samples for the Galaxy S2, Galaxy Tab 8.9, Galaxy Tab 10.1,
2 Infuse 4G, and 4G LTE (or ‘Droid Charge’),” as well as the latest iterations of the packaging and
3 packaging inserts for these products. (Order Granting Limited Expedited Disc. (D.N. 52), at 6.)
4 Apple stated in its Reply In Support of Its Motion to Expedite Discovery that “Apple seeks
5 expedited discovery for the express purpose of evaluating a motion for a preliminary injunction
6 directed at products to be released in the near future.” (D.N. 34 at 6.)

7 36. On May 16, after the hearing on Apple’s Motion to Expedite Discovery, Samsung
8 requested that Apple produce samples of the final, commercial version of the next generation
9 iPhone and iPad that Apple will release, as well as the final version of the packaging in which
10 these products will be delivered to retail customers and the final version of the insert(s) that will
11 be included within such packaging.

12 37. Apple has informed Samsung that Apple does not believe that the discovery that
13 Samsung has requested will be relevant to the resolution of a motion for a preliminary injunction
14 that Apple will bring in this lawsuit.

15 38. Apple has not agreed to provide any discovery prior to its filing of a preliminary
16 injunction motion.

17 39. Samsung seeks resolution of this discovery dispute on a shortened schedule so that
18 it is not prejudiced in defending against Apple’s motion for a preliminary injunction by Apple’s
19 early access to Samsung’s products, but Samsung’s delayed access to the discovery it seeks from
20 Apple.

21 Samsung’s Effort’s to Obtain a Stipulation

22 40. On May 26, 2011, my associate, Erik C. Olson, e-mailed Mr. Bartlett asking
23 whether Apple would join a stipulated request to shorten time on the briefing and hearing schedule
24 for Samsung’s Motion to Compel Apple to Produce Reciprocal Expedited Discovery (“Motion to
25 Compel”). Attached to the email was a draft stipulated request. Mr. Olson asked Mr. Bartlett to
26 inform Samsung whether Apple would join the stipulated request by the morning of May 27. (Ex.
27 27, attached hereto.)

1 41. On May 27, Mr. Bartlett e-mailed Mr. Olson, stating that Apple declined to join the
2 stipulated request. However, Mr. Bartlett also stated that Apple would not oppose a motion by
3 Samsung to obtain the briefing schedule set forth below.

- 4 - Samsung’s Opening Brief on its Motion will be due on or before May 27, 2011;
- 5 - Apple’s Opposition to Samsung’s Motion will be due on or before June 2, 2011; and
- 6 - Samsung’s Reply in support of its Motion will be due on or before June 7, 2011.

7 (Ex. 27, attached hereto.)

8 Prejudice that Samsung Will Suffer If the Court Does Not Shorten Time

9 42. Currently, Samsung must produce to Apple samples of the latest iterations of the
10 Galaxy S2, Galaxy Tab 8.9, Galaxy Tab 10.1, Infuse 4G and 4G LTE, and those products’
11 packaging and packaging inserts by June 17.

12 43. Apple has stated that it sought these product samples “for the express purpose of
13 evaluating a motion for a preliminary injunction directed at [Samsung] products to be released in
14 the near future.” (Apple’s Reply In Support of Mot. to Expedite Disc. (D.N. 34), at 6.)

15 44. Apple has not agreed to provide any discovery prior to its filing of a preliminary
16 injunction motion.

17 45. If Samsung’s Motion to Compel is not heard on a shortened schedule, Apple will
18 have the opportunity to use Samsung’s produced product samples and other discovery to work up
19 its motion for a preliminary injunction and supporting evidence. In the meantime, Samsung
20 would not have relevant discovery from Apple that it could use to prepare its defense to such a
21 motion. Any delay in resolving the current discovery dispute would thus prejudice Samsung’s
22 ability to defend itself on the merits against any motion for a preliminary injunction.

23 Prior Time Modifications

24 46. On Monday, April 19, 2011, Apple filed a Motion to Expedite Discovery. (D.N.
25 10.) Also on April 19, Apple filed a Motion to Shorten Time for Briefing and Hearing on its
26 Motion to Expedite Discovery (“Motion to Shorten Time”). (D.N. 12.) The Court granted in
27 part Apple’s Motion to Shorten Time, resulting in an approximately 12-day shortening of the
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1 briefing and hearing schedule that would have otherwise been allowable under the Local Rules.
2 (D.N. 26.)

3 Effect of Requested Modification

4 47. The requested modification should have no effect on the rest of the schedule in this
5 action.

6 I declare under penalty of perjury that the foregoing is true and correct. Executed in
7 Redwood Shores, California on May 27, 2011.

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By /s/ Todd M. Briggs

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Todd M. Briggs

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