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8 Attorneys for Plaintiff
 APPLE INC.

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

14 APPLE INC., a California corporation,

15 Plaintiff,

16 v.

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

21 Defendants.

Case No. 4:11-cv-01846-LHK

**DECLARATION OF GRANT L.
 KIM IN SUPPORT OF APPLE'S
 OPPOSITION TO SAMSUNG'S
 MOTION TO COMPEL
 EXPEDITED DISCOVERY**

Date: June 17, 2011

Time: 1:30 p.m.

Place: Courtroom 4, 5th Floor

Judge: The Honorable Lucy H. Koh

22 I, Grant L. Kim, do hereby declare as follows:

23 1. I am Of Counsel at the law firm of Morrison & Foerster LLP, which is counsel for
 24 Plaintiff Apple Inc. ("Apple"). I am admitted to practice law in the State of California and before
 25 this Court. I submit this declaration in support of Apple's Opposition to Samsung's Motion to
 26 Compel Apple to Produce Reciprocal Expedited Discovery. I have personal knowledge of the
 27

1 facts stated in this declaration, and I could and would competently testify to them if called as a
2 witness.

3 **The Parties' Efforts to Resolve this Discovery Dispute**

4 2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the
5 transcript of the May 12, 2011 hearing held by the Court in connection with Apple's Motion to
6 Expedite Discovery.

7 3. During the May 12, 2011 hearing, counsel for the Samsung defendants
8 ("Samsung") raised the question of "reciprocal" expedited discovery. Jason Barlett and I
9 participated in a meet-and-confer call with Samsung's counsel on this subject on May 23, 2011.
10 During that call, counsel for Samsung declined to discuss the discovery requests it had made
11 during the May 12 hearing on the ground that the Court had already decided that expedited
12 discovery should be of "a certain scope." Instead, counsel for Samsung argued that Apple should
13 produce samples of future products because Samsung was entitled to "reciprocal" discovery.
14 Counsel for Apple stated that it was prepared to engage in reasonable reciprocal discovery on
15 relevant issues, but pointed out that Apple's future products were not relevant because any
16 preliminary injunction motion would be based on Apple's current intellectual property rights and
17 current products, and not on future products.

18 4. When Apple's counsel asked during the May 23 call why future Apple products
19 are relevant to a preliminary injunction motion, counsel for Samsung advanced the new theory
20 that Apple's future products are relevant because they supposedly bear on the "likelihood of
21 expansion of product lines," which is one of the "likelihood of confusion" factors identified in
22 *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-349 (9th Cir. 1979). Samsung's counsel
23 asserted that if Apple removed certain trade dress features from future Apple products, this would
24 be relevant to a preliminary injunction motion. Apple's counsel pointed out that even if such
25 features were removed from future products, Apple could still assert trade dress claims based on
26 Apple's current products. Counsel for Samsung admitted that Apple could assert such claims, but
27 continued to insist that future Apple products were somehow relevant to claims based on current
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1 Apple products. Apple's counsel stated that it would consider these comments and reply the next
2 day.

3 5. Although counsel for Apple sent counsel for Samsung a letter on May 24, 2011
4 addressing the above issues, Samsung did not respond and instead filed its Motion to Compel on
5 May 27. On May 31, 2011, counsel for Apple notified counsel for Samsung of several
6 misstatements in Samsung's Motion to Compel and requested that Samsung withdraw or correct
7 its motion. Attached hereto is a true and correct copy of this letter from Jason R. Bartlett to
8 Victoria F. Maroulis dated May 31, 2011. In that letter, counsel for Apple reiterated that it would
9 not rely on future Apple products in any preliminary injunction motion and remained willing to
10 consider reasonable requests for discovery relevant to such a motion.

11 6. On June 1, 2011, counsel for Samsung sent a letter confirming that Samsung is not
12 currently seeking expedited discovery on the issues that it identified during the May 12 hearing,
13 but stating that Samsung may seek such discovery in the future. Attached hereto as Exhibit 3 is a
14 true and correct copy of this from Todd M. Briggs to Jason R. Bartlett dated June 1, 2011.

15 **Apple's Product Announcement and On Sale Dates**

16 7. Attached hereto as Exhibit 4 is a true and correct copy of an Apple press release
17 dated June 8, 2009,¹ noting that the iPhone 3GS smartphone was unveiled on June 8, 2009, and
18 scheduled to be released for sale on June 19, 2009.

19 8. Attached hereto as Exhibits 5 and 6 are true and correct copies of Apple press
20 releases dated June 7, 2010 and June 28, 2010,² noting that the iPhone 4 smartphone was unveiled
21 on June 7, 2010, and released for sale on June 24, 2010.

22 9. Attached hereto as Exhibit 7 is a true and correct copy of an Apple press release
23 dated September 1, 2010,³ noting that the current generation iPod Touch media player was
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25 ¹ <http://www.apple.com/pr/library/2009/06/08iphone.html>, downloaded on June 7, 2011.

26 ² <http://www.apple.com/pr/library/2010/06/07iphone.html> and
27 <http://www.apple.com/pr/library/2010/06/28iphone.html>, downloaded on June 7, 2011.

28 ³ <http://www.apple.com/pr/library/2010/09/01ipodtouch.html> downloaded on June 7, 2011.

1 announced on September 1, 2010, and scheduled to be released for sale only a few days later on
2 September 8, 2010.

3 10. Attached hereto as Exhibits 8 and 9 are true and correct copies of Apple press
4 releases dated January 27, 2010 and March 5, 2010,⁴ noting that the iPad tablet computer was first
5 introduced on January 27, 2010, and scheduled to be released for sale on April 3, 2010.

6 11. Attached hereto as Exhibits 10 and 11 are true and correct copies of Apple press
7 releases dated March 2, 2011 and March 10, 2010,⁵ noting that the iPad 2 product was unveiled
8 on March 2, 2011, and scheduled to be released for sale on March 11, 2011.

9 **News Articles Referring to Apple's Policy of Not Commenting**
10 **on Speculation About Products**

11 12. Attached hereto as Exhibit 12 is a true and correct copy of a report titled "Is it
12 Finally Time for the Verizon iPhone?"⁶ noting that "A spokeswoman for Apple declined to
13 comment" regarding a speculated iPhone mobile phone for use on the Verizon network.

14 13. Attached hereto as Exhibit 13 is a true and correct copy of an Internet report titled
15 "Apple netbook rumors persist: 10-inch touchscreen order confirmed?"⁷ noting that "the
16 manufacturer[s] themselves – like Apple – have declined to comment" on speculation pertaining
17 to a potential Apple product.

18 14. Attached hereto as Exhibit 14 is a true and correct copy of an Internet report titled
19 "WSJ: Verizon iPhone Debuts Early 2011"⁸ noting that "Apple does not officially comment on
20 product rumors."

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22 ⁴ <http://www.apple.com/pr/library/2010/01/27ipad.html> and
23 <http://www.apple.com/pr/library/2010/03/05ipad.html> downloaded on June 7, 2011.

24 ⁵ <http://www.apple.com/pr/library/2011/03/02ipad.html> and
25 <http://www.apple.com/pr/library/2011/03/10ipad.html> downloaded on June 7, 2011.

26 ⁶ <http://bits.blogs.nytimes.com/2011/01/07/is-it-finally-time-for-the-verizon-iphone/>,
27 downloaded on June 7, 2011.

28 ⁷ <http://www.slashgear.com/apple-netbook-rumors-persist-10-inch-touchscreen-order-confirmed-1137260/>, downloaded on June 7, 2011.

⁸ <http://www.wired.com/gadgetlab/2010/10/verizon-iphone-5/>, downloaded on June 7, 2011.

1 15. Attached hereto as Exhibit 15 is a true and correct copy of an Internet report titled
2 “Apple Hints at Launch of Nehalem-based Xserve”⁹ citing an Apple spokesperson and noting that
3 “Apple does not comment on future products.”

4 16. Attached hereto as Exhibit 16 is a true and correct copy of an Internet report titled
5 “Live Blogging the iPad Product Announcement”¹⁰ noting: “After remaining mum during more
6 than two years of rumors and thousands of speculative articles and blog posts, Apple is finally
7 ready to unveil its ‘latest creation’ on Wednesday at the Yerba Buena Center for the Arts in San
8 Francisco.”

9 **News Articles Referring to Coverage of Apple’s Product Announcements**

10 17. Attached hereto as Exhibit 17 is a true and correct copy of a CNN article titled
11 “Why Steve Jobs’ keynotes matter,”¹¹ noting that

- 12 • “[Steve Jobs] “delivers the goods in terms of new products with real impact,”
13 and “deliver[s] them with some drama and flair . . . as if they were Broadway
14 shows”; and
- 15 • “the four words that set the Street’s hardened hearts aflutter -- and Apple’s
16 share price soaring nearly 2% in early morning trading -- were ‘Steve Jobs’
17 and ‘keynote address.’”

18 18. Attached hereto as Exhibit 18 is a true and correct copy of an NPR article titled
19 “Live Blog: Steve Jobs Introduces the iPhone 4,”¹² which notes that “it seems like the last year in
20 particular has been more of a frenzied media circus than in the last decade. Apple is so clear[ly]
21 the hot company right now. When Steve Jobs opens his mouth everyone seems to dwell on his
22 every word.”

23 ⁹ http://www.pcworld.com/businesscenter/article/162549/apple_hints_at_launch_of_nehalembased_xserve.html, downloaded on June 7, 2011.

24 ¹⁰ <http://bits.blogs.nytimes.com/2010/01/27/live-blogging-the-apple-product-announcement/>,
25 downloaded on June 7, 2011.

26 ¹¹ <http://tech.fortune.cnn.com/2011/05/31/why-steve-jobs-keynotes-matter/>, downloaded on
27 June 7, 2011.

28 ¹² <http://www.npr.org/blogs/alltechconsidered/2010/06/07/127530049/live-blogging-apple-s-developers-conference>, downloaded on June 7, 2011.

1 **News Articles Referring to the Importance of Secrecy Regarding Apple’s Product Launches**

2 19. Attached as Exhibit 19 is a true and correct copy of a New York Times article
3 titled “To Cut Online Chatter, Apple Goes to Court,”¹³ noting that

- 4 • “[Mr. Jobs] has at the same time become a master of orchestrating new
5 product buzz,” and that “[he] has long turned conventional product
6 announcements into part of the Apple mystique . . . often unveil[ing] new
7 hardware and software while sitting at a computer keyboard much like a
8 performing concert pianist in front of cheering crowds”;
- 9 • ““Steve might as well have invented the term “event marketing” . . . [because]
10 You focus everything on a moment in time and then persuade everyone to
11 anticipate that moment.’ Apple’s marketing wizard has deftly used
12 speculation about his next commercial move as an essential component of
13 each new product introduction”;
- 14 • “MacWorld exhibitions held in San Francisco in January remain a highly
15 anticipated event for the Macintosh faithful,” and that “[m]ystery, anticipation
16 and surprise all lie at the heart of the events”;
- 17 • “Mr. Jobs will occasionally tease his audience, pretending to walk off stage,
18 before returning and saying, “Oh! One more thing” and then unveiling some
19 new product”; and
- 20 • ““It’s a classic part of a Jobs keynote . . . It’s a treat. It’s not as much fun for
21 people if they know what it is.””

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27 ¹³ [http://www.nytimes.com/2005/03/21/technology/21apple.html?scp=1&sq=](http://www.nytimes.com/2005/03/21/technology/21apple.html?scp=1&sq=To%20Cut%20Online%20Chatter&st=cse)
28 [To%20Cut%20Online%20Chatter&st=cse](http://www.nytimes.com/2005/03/21/technology/21apple.html?scp=1&sq=To%20Cut%20Online%20Chatter&st=cse), downloaded on June 7, 2011

Websites Offering Apple Products for Sale

20. Attached hereto as Exhibits 20 to 22 are true and correct copies of printouts from (Ex. 20) Apple's website¹⁴; (Ex. 21) Bestbuy's website¹⁵; and (Ex. 22) AT&T's website,¹⁶ which list the iPhone 3GS product for sale.

21. Attached hereto as Exhibits 23 and 24 are true and correct copies of printouts from Amazon.com's website,¹⁷ which list new and refurbished iPhone 3G products for sale.

22. Attached hereto as Exhibits 25 and 26 are true and correct copies of printouts from AT&T's and Amazon.com's websites,¹⁸ which listed the iPad tablet computer for sale.

Images of Apple Products

23. Attached hereto as Exhibits 27 and 28 are true and correct copies of side-by-side images of various versions of the iPhone and iPad devices.

Currently Available Samsung Products

24. Attached hereto as Exhibits 29 and 30 are true and correct copies of printouts from AT&T's and Verizon's websites,¹⁹ which list the Samsung Infuse 4G and Droid Charge for sale.

¹⁴ <http://store.apple.com/us/product/MC555?mco=MTM3NDk1NTI>, downloaded on June 7, 2011.

¹⁵ [http://www.bestbuy.com/site/Apple%26%23174%3B+-+iPhone+3GS+with+8GB+Memory++Black+\(AT%26T\)/1048998.p?id=1218212859929&skuId=1048998&contract_desc=](http://www.bestbuy.com/site/Apple%26%23174%3B+-+iPhone+3GS+with+8GB+Memory++Black+(AT%26T)/1048998.p?id=1218212859929&skuId=1048998&contract_desc=), downloaded on June 7, 2011.

¹⁶ http://www.wireless.att.com/cell-phone-service/packages/packages-details.jsp?q_package=sku4670287&_requestid=173027, downloaded on June 7, 2011.

¹⁷ http://www.amazon.com/Apple-iPhone-3G-8GB-Unlocked/dp/B001UBB9GM/ref=sr_1_1?ie=UTF8&qid=1307224288&sr=8-1, downloaded on June 7, 2011; and http://www.amazon.com/Apple-iPhone-3G-8GB-Refurbished/dp/B0032SJGWK/ref=sr_1_3?ie=UTF8&qid=1307471365&sr=8-3, downloaded on June 7, 2011.

¹⁸ http://www.wireless.att.com/cell-phone-service/cell-phone-details/?device=Apple%C2%AE+iPad%C2%AE+with+Wi-Fi+%2B+3G+64GB+Black&q_sku=sku5110232#fbid=bfXv3jQBH1J, and http://www.amazon.com/Apple-first-generation-MB292LL-Tablet/dp/B002C7481G/ref=sr_1_1?ie=UTF8&qid=1307224566&sr=8-1, both downloaded on June 7, 2011.

¹⁹ http://www.wireless.att.com/cell-phone-service/cell-phone-details/?q_sku=sku5190290#fbid=bfXv3jQBH1J, and <http://www.verizonwireless.com/b2c/store/controller?item=phoneFirst&action=viewPhoneDetail&selectedPhoneId=5642>, both downloaded on June 7, 2011.

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I declare under the penalty of perjury under the laws of the United States of America that the forgoing is true and correct and that this Declaration was executed this 7th day of June, 2011, at San Francisco, California.

Dated: June 7, 2011

By: /s/ Grant L. Kim
GRANT L. KIM

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ECF ATTESTATION

I, JASON R. BARTLETT, am the ECF User whose ID and password are being used to file the following document: DECLARATION OF GRANT L. KIM IN SUPPORT OF APPLE'S OPPOSITION TO SAMSUNG'S MOTION TO COMPEL RECIPROCAL EXPEDITED DISCOVERY. In compliance with General Order 45, X.B., I hereby attest that Jayna R. Whitt has concurred in this filing.

Dated: June 7, 2011

JASON R. BARTLETT
MORRISON & FOERSTER LLP

By: /s/ Jason R. Bartlett
JASON R. BARTLETT