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11 Attorneys for Plaintiff and
 12 Counterclaim-Defendant APPLE INC.

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

17 APPLE INC.,
 18 Plaintiff,
 19 v.
 20 SAMSUNG ELECTRONICS CO., LTD., A
 Korean business entity; SAMSUNG
 21 ELECTRONICS AMERICA, INC., a New York
 corporation; SAMSUNG
 22 TELECOMMUNICATIONS AMERICA, LLC, a
 Delaware limited liability company.,
 23 Defendants.
 24

Case No. 11-cv-01846-LHK

**DECLARATION OF HAROLD J.
 MCELHINNY IN SUPPORT OF
 APPLE'S MOTION TO COMPEL
 PRODUCTION OF DOCUMENTS
 AND THINGS**

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1 I, HAROLD J. McELHINNY, declare as follows:

2 1. I am a partner in the law firm of Morrison & Foerster LLP, counsel for Apple Inc.
3 (“Apple”). I am licensed to practice law in the State of California. I have personal knowledge of
4 the matters stated herein or understand them to be true from members of my litigation team. I
5 make this declaration in support of Apple’s Motion to Compel Production of Documents and
6 Things.

7 2. I am co-lead trial counsel for Apple in this action.

8 3. On January 5, 2012, I met in person with Charles Verhoeven of Quinn, Emanuel,
9 Urquhart & Sullivan, lead trial counsel for Samsung in this matter. We, along with several others
10 from each firm, met for approximately three hours to discuss outstanding discovery items. The
11 parties exchanged agendas in advance of the meeting. Attached hereto as Exhibit “A” is a true
12 and correct copy of the agenda provided to Samsung by Apple on January 3, 2012. Attached
13 hereto as Exhibit “B” is a true and correct copy of the agenda provided to Apple by Samsung on
14 January 4, 2012. During the three-hour meeting, the parties discussed all of the items on both
15 parties’ agendas.

16 4. Near the end of the meeting, Mr. Verhoeven and I concurred that the meet-and-
17 confer requirement had been satisfied, with two exceptions identified below. With respect to
18 those two exceptions, the parties have met and conferred and are at an impasse.

19 5. During the January 5 meeting, the parties discussed Samsung’s production of
20 technical documents. In a letter sent to Samsung’s counsel the morning of January 5, Apple had
21 identified 19 categories of technical documents that Apple had requested months earlier, that
22 Apple had not located in Samsung’s production to date, and that Apple needed urgently to
23 prepare for upcoming depositions. Attached hereto as Exhibit “C” is a true and correct copy of
24 the letter sent to Samsung on the morning of January 5, 2012. This letter represents a further
25 narrowing of broader categories of technical documents identified by Apple in correspondence
26 over the prior several weeks. Samsung did not agree at the meeting to supplement its production
27 with the technical documents listed in Apple’s January 5 letter. Rather, counsel for Samsung
28 stated that she would need to confer with her client and would respond in writing on the following

1 day, Friday, January 6, 2012. I told Samsung's representatives that Samsung's production of
2 these technical documents was long overdue, that its production of these documents was
3 incomplete, and that unless Samsung agreed on or before January 6, 2012, that it would complete
4 its production of these documents by a date certain, Apple would move to compel their
5 production. Counsel for Samsung did not send a letter on January 6 agreeing to complete its
6 production of these technical documents by a date certain.

7 6. During the January 5 meeting, the parties discussed Samsung's production of
8 documents relevant to Apple's design patent, trademark, and trade dress infringement case. In a
9 letter sent to Samsung's counsel on January 3, 2012, Apple had identified 12 categories of
10 documents relevant to these issues that Apple had requested months earlier, but that Apple had
11 not located in Samsung's production to date, and that Apple needed urgently to prepare for
12 upcoming depositions. Attached hereto as Exhibit "D" is a true and correct copy of the letter sent
13 to Samsung on January 3, 2012. Samsung did not agree at the January 5 meeting to supplement
14 its production with the design, trademark, and trade dress documents identified in Apple's
15 January 3 letter. Rather, counsel for Samsung stated that she had not had sufficient time to confer
16 with her client in advance of the meeting regarding this topic, and asserted that the meet-and-
17 confer requirement had not been satisfied on this issue. I told Samsung's representatives that
18 Samsung's production of these documents was long overdue, that its production of these
19 documents was incomplete, and that unless Samsung agreed on or before January 6, 2012, that it
20 would complete its production of these documents by a date certain, Apple would move to
21 compel their production. Counsel for Samsung did not communicate on or before January 6 any
22 agreement to complete its production of these design, trademark, and trade dress documents by a
23 date certain.

24 7. During the January 5 meeting, the parties discussed Samsung's production of
25 sketchbooks, CAD drawings, and physical models. On December 22, the Court had ordered
26 Samsung to produce all sketchbooks, CAD drawings, and physical models for all Galaxy phone
27 and tablet products by no later than December 31, 2011. Samsung represented at the January 5
28 meeting that its production in those categories pursuant to the December 22 Order was complete.

1 The parties then discussed Apple’s December 28, 2011, letter to Samsung, which had identified a
2 broader range of sketchbooks, CAD drawings, and physical models—extending to all designs for
3 all Samsung mobile phone products, tablet products, and touchscreen digital media players—and
4 that Apple had requested months earlier, but that Apple had not located in Samsung’s production
5 to date, and that Apple needed urgently to prepare for upcoming depositions. Attached hereto as
6 Exhibit “E” is a true and correct copy of this December 28 letter. At the January 5 meeting,
7 Samsung stated that it would not provide this expanded production.

8 8. During the January 5 meeting, the parties discussed Samsung’s production of
9 marketing, market analysis, and advertising documents. In a letter sent to Samsung’s counsel on
10 January 3, 2012, Apple had identified 13 categories of marketing, market analysis, and
11 advertising documents that Apple had requested months earlier, but had not located in Samsung’s
12 production to date, and needed urgently to prepare for upcoming depositions. Attached hereto as
13 Exhibit “F” is a true and correct copy of the letter sent to Samsung on January 3, 2012. Samsung
14 did not agree at the meeting to supplement its production with the marketing, market analysis, and
15 advertising documents identified in Apple’s January 3 letter. Rather, counsel for Samsung stated
16 that she had not had sufficient time to confer with her client in advance of the meeting regarding
17 this topic, and asserted that the meet-and-confer requirement had not been satisfied on this issue.
18 I told Samsung’s representatives that the production of these documents was long overdue, that
19 Samsung’s production of marketing, market analysis, and advertising documents was incomplete,
20 and that unless Samsung agreed on or before January 6, 2012, that it would complete its
21 production of these documents by a date certain, Apple would move to compel their production.
22 Counsel for Samsung did not communicate any agreement on January 6 to complete its
23 production of these marketing, market analysis, and advertising documents by a date certain.

24 9. During the January 5 meeting, the parties discussed Samsung’s production of sales
25 and financial documents relevant to damages. In letters sent to Samsung’s counsel on December
26 19 and 28, 2011, Apple had identified a total of 11 categories of sales and financial documents
27 that Apple had requested months earlier, but had not located in Samsung’s production to date, and
28 needed urgently to prepare for upcoming depositions. Attached hereto as Exhibits “G” and “H”

1 are true and correct copies of the December 19 and December 28 letters sent to Samsung. During
2 the meeting, Samsung did not agree to supplement its production with the identified sales and
3 financial documents. Rather, counsel for Samsung stated that she would need to confer with her
4 client and would respond in writing on the following day, Friday, January 6, 2012. I told
5 Samsung's representatives that the production of these sales and finance documents was long
6 overdue, that Samsung's production of sales and financial documents was incomplete, and that
7 unless Samsung agreed on or before January 6, 2012, that it would complete its production of
8 these documents by a date certain, Apple would move to compel their production. Counsel for
9 Samsung did not send a letter on January 6 agreeing to produce the identified categories of sales
10 and financial documents by a date certain.

11 I declare under penalty of perjury that the foregoing is true and correct. Executed this
12 11th day of January, 2012, at San Francisco, California.

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14 /s/ Harold J. McElhinny
15 Harold J. McElhinny
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