

1 HAROLD J. MCELHINNY (CA SBN 66781)
 hmcclhinny@mofo.com
 2 MICHAEL A. JACOBS (CA SBN 111664)
 mjacobs@mofo.com
 3 JENNIFER LEE TAYLOR (CA SBN 161368)
 jtaylor@mofo.com
 4 ALISON M. TUCHER (CA SBN 171363)
 atucher@mofo.com
 5 RICHARD S.J. HUNG (CA SBN 197425)
 rhung@mofo.com
 6 JASON R. BARTLETT (CA SBN 214530)
 jasonbartlett@mofo.com
 7 MORRISON & FOERSTER LLP
 425 Market Street
 8 San Francisco, California 94105-2482
 Telephone: (415) 268-7000
 9 Facsimile: (415) 268-7522

WILLIAM F. LEE
 william.lee@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 60 State Street
 Boston, MA 02109
 Telephone: (617) 526-6000
 Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
 mark.selwyn@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 950 Page Mill Road
 Palo Alto, California 94304
 Telephone: (650) 858-6000
 Facsimile: (650) 858-6100

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 (PSG)
**DECLARATION OF ERIK J.
 OLSON IN SUPPORT OF MOTION
 TO COMPEL PRODUCTION OF
 DOCUMENTS AND THINGS**

25
 26
 27
 28

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

2 1. I am a partner at Morrison & Foerster LLP representing Apple in this matter. I
3 have appeared in this action. I have personal knowledge of the facts set forth below, except
4 where I indicate that I am relying on the work of others whom I supervise. If called upon, I
5 would and could competently testify thereto.

6 2. I have been personally involved in Apple's work to evaluate money damages and
7 other relief in connection with its claims against Samsung. I have substantial prior legal and
8 litigation experience in this area.

9 3. In connection with my work in this case, I have reviewed a substantial number of
10 the documents that Samsung has produced that contain information on various financial metrics,
11 such as sales, cost of goods sold, gross margin, expenses of various types, and operating profit.
12 In addition, I have supervised other lawyers who have reviewed additional documents produced
13 by Samsung. Collectively, these lawyers and I have made a good faith effort to look at the
14 documents relating to this subject matter that Samsung has produced.

15 4. Based on the documents, it appears that Samsung uses an electronic database, as
16 its "system of record" to keep track of accounting and financial data. Such systems store data and
17 can routinely be used to prepare financial statements or financial reports through an electronic
18 interface. Such reports can be prepared either based on a standardized template or prepared based
19 on *ad hoc* criteria selected by a user. Such systems reduce the need to "print" certain financial
20 data as a hard copy. Nonetheless, they are designed to provide consistent, and often immediate,
21 access to updated reports for members of a company's finance and management team.

22 5. Samsung's production includes various, *ad hoc* documents that contain partial
23 information from Samsung's financial system, presentations that include financial data from this
24 and other sources, and material that does not appear to tie to Samsung's accounting database.
25 The reports that Samsung has produced are piecemeal and incomplete. For example, they contain
26 information that reflects only: (a) one or more carriers or vendors to whom Samsung sells phones;
27 (b) one or more accused products; (c) one division of Samsung; (d) some but not all expenses
28 (such as reports reflecting only standard costs or only advertising costs but not other costs of good

1 sold or other expenses); and (e) limited, often non-standard periods of time (e.g. May to August
2 2009). Alternatively, the documents produced are forecasts and not actual reports for periods
3 prior to their production. The documents are occasionally inconsistent and no single type of
4 report exists in sufficient numbers to cover the relevant period during which infringement has
5 occurred based on Apple's allegations.

6 6. As a result, the documents produced to date are not sufficient to obtain any rational
7 or consistent picture of Samsung's sales or profitability due to its infringement. To do so, it is
8 important to have figures reflecting sales, costs, expenses, and various measures of profitability,
9 and it is important to have data that is comprehensive and consistent across time periods and is
10 drawn from Samsung's system of record.

11 7. Samsung also improperly seeks to limit its production solely to information that
12 Samsung has specifically tied to an individual accused product. While that information must be
13 produced, the vast majority of line items included in Samsung's income statement are not tracked
14 on an individual product basis. To understand how such expenses should (or should not) be
15 allocated to calculate Samsung's profits requires a production of Samsung's financial data on a
16 broader basis.

17 8. Samsung's production is also lacking the worldwide data needed by Apple. If
18 Samsung already allocated each relevant U.S. expense or deduction to a specific smartphone,
19 worldwide data would be unnecessary. Samsung does not. Thus, experts will need to evaluate
20 how any unallocated expenses should be treated. To do so, Apple's financial expert will need
21 broader consolidated data on all of Samsung's sales and expenses in the United States and
22 worldwide. Moreover, the broader data is needed to untangle the highly complex financial
23 structure created by transfer pricing, internal reallocations and other intercompany transfers that
24 artificially increase or diminish the revenues and profits of individual subsidiaries.

25 9. Obtaining consistent and comprehensive data from which to evaluate Samsung's
26 profitability is one of the goals of Apple's motion to compel. Despite specific requests, Samsung
27 has not provided this information to date.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: January 11, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs