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 Counterclaim-Defendant APPLE INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

APPLE INC., a California corporation,
 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 RICHARD
 HUNG IN SUPPORT OF APPLE'S
 OPPOSITION TO SAMSUNG'S
 MOTION FOR LEAVE TO
 SUPPLEMENT INFRINGEMENT
 CONTENTIONS**

1 I, Richard S.J. Hung, do hereby declare as follows:

2 1. I am a partner at the law firm of Morrison & Foerster LLP, attorneys of record in
3 this action for Apple Inc. (“Apple”). I submit this declaration in support of Apple’s Opposition to
4 Samsung’s Motion for Leave to Supplement Its Infringement Contentions. Unless otherwise
5 indicated, I have personal knowledge of the matters set forth below. If called as a witness, I could
6 and would testify competently as follows.

7 2. On August 26, 2011, Apple served its Patent Local Rule 3-1 Disclosure of
8 Asserted Claims and Infringement Contentions and an addendum thereto (“Infringement
9 Contentions”) on Samsung. That disclosure identified 27 products including the Galaxy Tab,
10 Galaxy S 2, Captivate, Epic 4G, Nexus S, Showcase Galaxy S, and Transform. One product, the
11 Gravity Smart, was mistakenly identified as the “Gravity Smart.”

12 3. On November 9, 2011, Apple wrote to Samsung to ask that new products be added
13 to this lawsuit. Based on its continuing review of Samsung’s products, Apple proposed that the
14 Galaxy Player 4.0, Galaxy Player 5.0, Galaxy Tab 7.0 Plus, Galaxy Tab 8.9, and Galaxy S II
15 Skyrocket be added to this lawsuit. Attached as Exhibit A is a true and correct copy of the
16 November 9, 2011 e-mail and stipulation sent by Jason Bartlett to counsel for Samsung.

17 4. On November 22, Samsung responded by e-mail indicating its willingness to agree
18 to the addition of these products, but asked that the iPhone 4S be added in return. Attached as
19 Exhibit B is a true and correct copy of the November 22, 2011 correspondence from Victoria
20 Maroulis to Richard Hung.

21 5. Over the next six weeks, the parties discussed how adding these products might
22 affect this litigation. The parties discussed whether the parties could change their infringement
23 theories, as compared to previously disclosed theories, when adding these products. Attached as
24 Exhibit C is a true and correct copy of correspondence from Samuel Maselli to Victoria Maroulis
25 on November 30, 2011. Attached as Exhibit D is a true and correct copy of correspondence from
26 Victoria Maroulis to Samuel Maselli on December 5, 2011. Attached as Exhibit E is a true and
27 correct copy of correspondence from Samuel Maselli to Victoria Maroulis on December 14, 2011.
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1 Attached as Exhibit F is a true and correct copy of correspondence from Todd Briggs to Samuel
2 Maselli on December 22, 2011.

3 6. While the parties' discussions were ongoing, Samsung continued to release new
4 products. These new products included the Galaxy Nexus, which was released on December 15,
5 2011. See [http://latimesblogs.latimes.com/technology/2011/12/samsung-galaxy-nexus-finally-
6 has-a-us-release-date-thursday.html](http://latimesblogs.latimes.com/technology/2011/12/samsung-galaxy-nexus-finally-has-a-us-release-date-thursday.html).

7 7. On January 6, 2012, the parties appeared to have reached agreement on the scope
8 of the parties' supplementation of their infringement theories. At Samsung's request, Apple
9 agreed to draft a stipulation identifying the products that the parties sought to be added. Attached
10 as Exhibit G is a true and correct copy of correspondence and draft stipulation sent by Mark
11 Selwyn to Todd Briggs on January 6, 2012.

12 8. As a result in part of Samsung's continued product releases, Apple identified 18
13 Samsung products in the proposed stipulation:

- 14 • 5 products that were previously identified in Apple's November 9,
15 2011 draft of the stipulation (*i.e.*, the Galaxy Tab 7.0 Plus, the Galaxy
16 Tab 8.9, the Galaxy Player 4.0, the Galaxy Player 5.0, and the Galaxy S
17 II Skyrocket);
- 18 • 1 product that was identified to avoid confusion over its slightly
19 different product names (*i.e.*, the Showcase i500, which is identical to
20 the Showcase Galaxy S listed in Apple's original Infringement
21 Contentions);
- 22 • 1 product that had been misnamed in Apple's Infringement Contentions
23 (*i.e.*, the Gravity Smart, mistakenly identified as the "Gravity");
- 24 • 1 product that Apple had overlooked in its original Infringement
25 Contentions (the Dart); and
- 26 • 10 products that were released between August 21, 2011 (just before
27 Apple served its Infringement Contentions) and December 15, 2011
28 (the Conquer 4G, Admire, Galaxy S II Epic 4G Touch, Focus S,
Stratosphere, Transform Ultra, Captivate Glide, and Galaxy Nexus).

9. Samsung rejected Apple's proposed stipulation on January 10, 2012. Attached as
Exhibit H is a true and correct copy of correspondence from Todd Briggs to Mark Selwyn on
January 10, 2012.

1 10. On January 27, 2012, the Court encouraged the parties to confer about possible
2 compromises in its grant of Samsung's motion to shorten time. Over the next seven days, the
3 parties conferred in good faith about such compromises.

4 11. Samsung ultimately was willing to agree that, in return for adding the iPhone 4S to
5 this case, Apple could add one new product -- the Galaxy Nexus. Apple also could add (or clarify
6 the earlier inclusion of) six products as Accused Instrumentalities -- the Galaxy Tab 7.0 Plus, the
7 Galaxy Tab 8.9, the Galaxy S II Epic 4G Touch, the Galaxy S II SkyRocket, the Showcase i500,
8 and the Gravity Smart. The parties also were even willing to agree that any supplemental
9 infringement contentions would not change from theories previously disclosed. Finally, the
10 parties were willing to agree that the added products would not require amendments to the
11 parties' claim construction positions or invalidity contentions, the discovery cutoff, or the trial
12 schedule. Attached as Exhibit I is a true and correct copy of correspondence exchanged between
13 Samsung and Apple between January 26, 2012 and February 2, 2012. Attached as Exhibit J is a
14 true and correct copy of an e-mail from Richard Hung to Todd Briggs, attaching Apple's redline
15 to the proposed stipulation.

16 12. The parties ultimately disagreed on one key issue -- whether depositions could be
17 re-taken. Samsung proposed that depositions be allowed to be re-taken with good cause.
18 Attached as Exhibit K is a true and correct copy of a February 3, 2012 e-mail from Todd Briggs
19 to Richard Hung. Apple, by contrast, proposed that depositions could not be retaken based on the
20 addition of any products and communicated this via a telephone call from Richard Hung to Todd
21 Briggs on the morning of February 3, 2012.

22 13. Attached as Exhibit L is a true and correct excerpt of the January 17, 2012
23 *Markman* hearing transcript.

24 14. Attached as Exhibit M is a true and correct excerpt of the January 19, 2012 hearing
25 transcript before Magistrate Judge Grewal.

26 15. More than 115 depositions have already been taken in the above captioned action,
27 with more than 50 more remaining (and more still to be scheduled in the co-pending ITC actions).
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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. Executed on February 3, 2012 at San Francisco, California.

By: /s/ Richard S.J. Hung
Richard S.J. Hung