

1 HAROLD J. MCELHINNY (CA SBN 66781)
 2 hmcclhinny@mofo.com
 3 MICHAEL A. JACOBS (CA SBN 111664)
 4 mjacobs@mofo.com
 5 JENNIFER LEE TAYLOR (CA SBN 161368)
 6 jtaylor@mofo.com
 7 ALISON M. TUCHER (CA SBN 171363)
 8 atucher@mofo.com
 9 RICHARD S.J. HUNG (CA SBN 197425)
 10 rhung@mofo.com
 11 JASON R. BARTLETT (CA SBN 214530)
 12 jasonbartlett@mofo.com
 13 MORRISON & FOERSTER LLP
 14 425 Market Street
 15 San Francisco, California 94105-2482
 16 Telephone: (415) 268-7000
 17 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

Attorneys for Plaintiff and
 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 corporation; SAMSUNG
 ELECTRONICS AMERICA, INC., a New
 York corporation; and SAMSUNG
 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 Defendants.

Case No. 11-cv-01846-LHK

**DECLARATION OF MINN CHUNG IN
 SUPPORT OF APPLE INC.'S MOTION
 FOR RULE 37(B)(2) SANCTIONS FOR
 SAMSUNG'S VIOLATION OF TWO
 DISCOVERY ORDERS**

Date: March 27, 2012
 Time: 10:00 a.m.
 Place: Courtroom 5, 4th Floor
 Judge: Hon. Paul S. Grewal

SUBMITTED UNDER SEAL

1 I, MINN CHUNG, declare as follows:

2 1. I am an attorney at the law firm of Morrison & Foerster LLP, counsel of record in
3 this action for plaintiff Apple Inc. (“Apple”). I submit this declaration in support of Apple’s
4 Motion for Finding That Samsung Violated Discovery Orders (the “Motion”). 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. I am a native Korean speaker and proficient in written Korean language. I have a
8 Bachelor of Science degree in physics from the Massachusetts Institute of Technology and spent
9 over 15 years developing technology products, both hardware and software, before attending law
10 school.

11 3. Attached hereto as **Exhibit A** is a true and correct copy of Samsung’s Response
12 and Objections to Apple’s Interrogatories Relating to Apple’s Motion for a Preliminary
13 Injunction (No. 1) dated September 19, 2011. - Redacted -

14 [Redacted]

15 [Redacted]

16 [Redacted]

17 [Redacted]

18 4. Attached hereto as **Exhibit B** is a true and correct copy of Samsung’s Objections
19 and Responses to Apple’s Interrogatories Relating to Apple’s Motion for a Preliminary Injunction
20 – Set Two (Nos. 10-14), dated September 21, 2011. In its Responses to Apple’s Interrogatories
21 Nos. 10 and 11, Samsung identified the same persons listed in Paragraph 3 above as designers of
22 the Infuse 4G, the Galaxy S 4G, the Galaxy Tab 10.1, and the Droid Charge.

23 5. The last day Samsung produced any document prior to the hearing on Apple’s
24 Motion for a Preliminary Injunction, which was held on October 13, 2011, was October 12, 2011.
25 Two documents numbering ten pages, Bates numbered SAMNDCA00045058-00045067, which
26 appear to be prior art references, were produced on October 12, 2011. No custodian information
27 was provided for these documents by Samsung.

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1 6. By October 13, 2011, Samsung had produced 2,446 documents in total sourced to
2 the Designer Custodians listed in Paragraph 3 above. Of these, **98** documents, **only about**
3 **4 percent**, mentioned Apple or Apple products.

4 7. After October 13, 2011, Samsung produced no documents sourced to any of the
5 Designer Custodians listed in Paragraph 3 above until December 7, 2011.

6 8. Between December 7, 2011 and December 31, 2011, Samsung produced 293
7 documents in total sourced to the Designer Custodians, 84 of which referenced Apple or Apple
8 products. Hence, the percentage of documents referencing Apple or Apple products from the
9 Designer Custodians in this period was **28 percent**, which was a *seven-fold jump* compared to
10 the percentage in Samsung's production up to October 13, 2011.

11 9. *After December 31, 2011*, Samsung produced 4,282 documents sourced to the
12 Designer Custodians, **1,034** of which referenced Apple or Apple products—*over ten times* the
13 number produced during the Preliminary Injunction phase of this case. The percentage of
14 documents referencing Apple or Apple products from the Designer Custodians in this period was
15 24 percent.

16 10. In total, Samsung produced **1,118 documents numbering over 35,000 pages** from
17 the custodial files of the Designer Custodians that reference Apple or Apple products *since*
18 **December 7, 2011**. Of these documents, all but 2 were produced since **December 23, 2011**.

19 11. Attached hereto as **Exhibit C** is a chart summarizing Samsung's production of all
20 documents sourced to the Designer Custodians from the beginning of this case until January 24,

21 2012. **- Redacted -**
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13. The designer custodial documents Samsung produced after December 23, 2011, are highly material to the disputed issues in Apple’s Motion for a Preliminary Injunction. Some help refute arguments Samsung made in opposition to Apple’s preliminary injunction motion.

14. For example, Samsung’s Opposition brief claimed that the evidence then in the record “refutes Apple’s claim that the ornamental design of is products is the basis for its market share.” (Samsung Opposition to Apple’s Motion for a Preliminary Injunction (“Opposition”) filed Aug. 22, 2011 at 31.) - Redacted -

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1 32. Attached hereto as Exhibit M is a true and correct copy of a letter dated
2 November 4, 2011 sent from Apple’s counsel to Samsung’s counsel. - Redacted -

3 [Redacted]
4 [Redacted]
5 Attached hereto as Exhibit N is a true and correct copy of a chart summarizing Samsung’s
6 production of survey documents from the files of these Survey Custodians. For each Survey
7 Custodian, the chart shows the number of survey documents referencing Apple or its products
8 produced before October 13 and the number of documents produced after that date. Before
9 October 13, Samsung did not produce any survey documents from the files of Survey Custodians
10 at all. In December 2011 and January 2012, Samsung produced 410 documents referencing
11 Apple or its products.

12 33. Like the design documents discussed above, the survey documents withheld from
13 Samsung’s preliminary injunction production contain highly relevant materials that were central
14 to the issues in dispute in Apple’s preliminary injunction motion. - Redacted -

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. Attached hereto as **Exhibit R** is a list of all documents referencing Apple or Apple products produced on or after December 8, 2011 from the custodial files of the Designer Custodians. Attached hereto as **Exhibit S** is a list of all survey documents referencing Apple or Apple products produced on or after December 8, 2011 from the custodial files of the Survey Custodians. For each entry in these lists, a short description of the nature of reference to

1 Apple or Apple products is provided. It is unquestionable that all of these documents should have
2 been produced by October 7, 2011, under the Court's September 28 Order.

3 37. Attached hereto as **Exhibit T** is a true and correct copy of excerpts from the
4 transcript of the September 28, 2011 hearing on Apple's motion to compel.

5 38. Attached hereto as **Exhibit U** is a true and correct copy of Samsung's Amended
6 Identification of Custodians, Litigation Hold Notices and Search Terms dated October 10, 2011.
7 The document was produced to Apple in conjunction with Samsung's production of documents in
8 October, 2011.

9 39. Attached hereto as **Exhibit V** is a true and correct copy of a letter from Sara
10 Jenkins to Wesley Overson dated October 10, 2011.

11 40. Attached hereto as **Exhibit W** is a true and correct copy of a letter from Wesley
12 Overson to Victoria Maroulis dated October 10, 2011.

13 41. Attached hereto as **Exhibit X** is a true and correct copy of a letter from Rachel
14 Kassabian to Wesley Overson dated October 25, 2011.

15 42. Attached hereto as **Exhibit Y** is a true and correct copy of a letter from Wesley
16 Overson to Rachel Kassabian dated November 1, 2011.

17 43. Attached hereto as **Exhibit Z** is a true and correct copy of excerpts from a
18 transcript of a hearing held before this Court on January 19, 2012.

19 44. Attached hereto as **Exhibit AA** is a true and correct copy of an e-mail from
20 Samsung's counsel discussing vendor problems dated October 7, 2011.

21 45. Attached hereto as **Exhibit BB** is a true and correct copy of excerpts from the
22 transcript of the deposition of Justin Denison, Samsung's 30(b)(6) designee, which took place on
23 September 21, 2011.

24 I declare under the penalty of perjury under the laws of the United States of America that
25 the forgoing is true and correct and that this Declaration was executed this 8th day of February
26 2012, at Seoul, South Korea.

By: /s/ Minn Chung
Minn Chung

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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 Minn Chung has concurred in this filing.

Dated: February 8, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs