

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.

Case No. 11-cv-01846-LHK (PSG)

**DECLARATION OF ERIC R.  
 ROBERTS IN SUPPORT OF  
 MOTION TO ENFORCE  
 JANUARY 27, 2012 ORDER AS TO  
 FINANCIAL DOCUMENTS**

Date: April 3, 2012  
 Time: 10:00 a.m.  
 Place: Courtroom 5, 4th Floor  
 Judge: Hon. Paul S. Grewal

26 PUBLIC REDACTED VERSION

1 I, Eric R. Roberts, declare as follows:

2 1. I am the Director of Forensic Accounting Services at Morrison & Foerster LLP,  
3 and have served in that position since 2006. For the eight years prior to that, I performed the  
4 same work and function at Morrison & Foerster but under different titles. I have over 40 years of  
5 financial and accounting experience, including 29 years at Deloitte (19 as a partner). I am a  
6 Certified Fraud Examiner and I have been certified in financial forensics by the American  
7 Institute of CPAs, as well as having been a CPA for over 40 years (currently in inactive status). I  
8 have a BS in Business Administration and an MBA from the University of California, Berkeley.

9 2. As a partner at Deloitte, I was responsible for financial statement audits of both  
10 large, multinational companies as well as small and startup operations. Many of these clients  
11 were in high-technology businesses. After several years as an audit partner, I transferred to the  
12 consulting practice, where I led the litigation support and bankruptcy practice in Northern  
13 California for 8 years. During that time I testified in many depositions and arbitrations and was  
14 accepted in federal and state courts both as an accounting and finance expert and as a damages  
15 expert. I also served as an arbitrator in an accounting-related case.

16 3. At Morrison & Foerster, much of my role is to assist attorneys by analyzing and  
17 often explaining financial statements and other financial data. I also work on cases involving  
18 financial or accounting-related matters brought by the Securities and Exchange Commission  
19 Enforcement Division.

20 4. I have reviewed and analyzed a document produced by Samsung to evaluate  
21 whether it provided information responsive to the Court's January 27, 2012 Order requiring the  
22 production of documents and/or internal Samsung reports relating to, among other things, U.S.  
23 and worldwide sales, unit sales, costs, selling prices, and profits by accused product by carrier by  
24 quarter. Attached hereto as Exhibit A is a true and correct copy of [REDACTED]

25 [REDACTED] I understand that [REDACTED]

26  
27  
28

1 [REDACTED]

2 [REDACTED]

3 5. While [REDACTED], it clearly is not  
4 sufficient and does not provide the detailed data required by the Court's Order. Nor does it  
5 provide the level of detail required by a comprehensive damages analysis. The major reasons  
6 supporting my conclusion are summarized below.

- 7 • [REDACTED]
- 8 [REDACTED]
- 9 [REDACTED]
- 10 [REDACTED]
- 11 • [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 • [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED]
- 17 • [REDACTED]
- 18 [REDACTED]
- 19 • [REDACTED]
- 20 [REDACTED]
- 21 • Amounts cannot be reconciled to audited financial statements or to publicly available  
22 information because no summary or other data are provided as to sales and expenses of  
23 non-accused products.

---

24 <sup>1</sup> [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

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

- [REDACTED]
- [REDACTED]
- [REDACTED]

6. Before describing in more detail the deficiencies of [REDACTED] in relation to the Court order, [REDACTED]

7. Based on my experience in reviewing internal and external financial statements and reports, it is apparent to me that this document was not prepared as a contemporaneous business record, but rather [REDACTED]. Further, there is nothing about this document that indicates it was ever utilized by Samsung or provided to U.S. or Korean management.

---

<sup>2</sup> [REDACTED]

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

8. [REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

10. [REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

---

3 [REDACTED]

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

[REDACTED]

[REDACTED]

12.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>4</sup> See, e.g., [REDACTED], a true and correct copy of which is attached hereto as Exhibit C.

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

[REDACTED]

[REDACTED]

This leads directly into another serious issue with [REDACTED] the allocation of expenses.

15. How expenses are allocated to products can significantly impact their profitability. In my experience it is highly unusual for companies to directly relate general and administrative expenses and certain sales costs to specific products. It is my understanding that [REDACTED]

[REDACTED]

[REDACTED] (See Olson Decl. Ex. 9 [REDACTED] In some situations companies will allocate these costs on a rational and consistent basis for management review and related purposes. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED] it

is virtually impossible for a damages expert to determine which costs are fixed and which are variable. In my experience, the determination of the types and amount of costs which are fixed and variable is a significant input into a damage calculation.

17. [REDACTED]

[REDACTED]

---

<sup>5</sup> [REDACTED]

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

[REDACTED]

18. [REDACTED]

[REDACTED]

Absent the documents [REDACTED] there is no way for Apple or its experts to verify the expenses claimed.

19. [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



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

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

20. [REDACTED]

21. I have been informed that Apple attorneys located certain financial documents that Samsung produced in the parallel ITC action after Apple filed its motion to compel. I conducted a review of these documents to determine if a comprehensive production of these documents would provide important information for testing the information in [REDACTED] referred to above or for calculating an appropriate amount of damages for this case.

22. [REDACTED]

---

6 [REDACTED]

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

23.

24.

25.

26.

27.

28. Finally, I have been informed that Samsung produced

[REDACTED]

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

[Redacted text block]

29.

[Redacted text block]

[Redacted text block]

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of February, 2012 at San Francisco, California.

/s/ Eric R. Roberts  
Eric R. Roberts

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 Eric R. Roberts has concurred in this filing.

Dated: February 28, 2012

/s/ Michael A. Jacobs  
Michael A. Jacobs