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

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

17 APPLE INC., a California corporation,
 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 MARC J.
 PERNICK IN SUPPORT OF
 APPLE'S RULE 37(b)(2) MOTION
 BASED ON SAMSUNG'S
 VIOLATION OF THE COURT'S
 DECEMBER 22, 2011 ORDER
 REGARDING SOURCE CODE**

Date: April 24, 2012
 Time: 10:00 a.m.
 Place: Courtroom 5, 4th Floor
 Judge: Hon. Paul S. Grewal

1 I, Marc J. Pernick, 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. Unless otherwise indicated, I
4 have personal knowledge of the matters stated herein or understand them to be true from
5 members of my litigation team. I make this Declaration in support of Apple’s Rule 37(b)(2)
6 Motion Based on Samsung’s Violation of the Court’s December 22, 2011 Order Regarding
7 Source Code.

8 2. Apple’s Infringement Contentions in this case allege that features of 27 Samsung
9 products infringe eight of Apple’s utility patents. I am informed and believe that Samsung served
10 its Invalidity Contentions on October 7, 2011, but did not produce any source code for the
11 accused products. I am also informed and believe that, as of early December 2011, Samsung had
12 still not produced any source code.

13 3. Samsung produced some source code shortly after the Court issued its
14 December 22, 2011 Order. I am informed and believe that this production was limited to code for
15 only a single version of each accused product. Samsung’s February 5, 2012 letter to me explains
16 how Samsung selected the one version of each accused product for which it produced source
17 code. A true and correct copy of this letter is attached hereto as Exhibit A.

18 4. Apple asked Samsung by letter of February 9, 2012 to immediately produce the
19 source code for the remaining versions of the accused products, and repeated its request at the
20 lead trial counsel meetings on February 14-15, 2012. A true and correct copy of my
21 February 9, 2012 letter to Samsung’s counsel regarding that issue is attached hereto as Exhibit B.

22 5. In response to Apple’s requests, Samsung still produced none of the missing
23 source code. But Samsung did represent that, for certain accused products, any modifications to
24 the unproduced source code did not affect the accused functionalities (with the exception of the
25 accused “bounce” functionality). A true and correct copy of a February 14, 2012 letter from
26 Samsung’s counsel to me regarding that issue is attached hereto as Exhibit C.

27 6. Samsung also said in this letter (and at the February 14-15, 2012 lead counsel
28 meetings) that it would continue investigating this issue and report back to us with regard to

1 additional accused products. At the lead counsel meetings, Samsung stated that it would try to
2 complete this investigation by February 22, 2012.

3 7. Samsung did not provide us with any further information on this topic on
4 February 22, 2012, and did not produce any additional source code on that date.

5 8. On February 26, 2012, Apple tried again to resolve or narrow the issues with
6 regard to this dispute. On that date, I sent Samsung's counsel a proposed stipulation for
7 Samsung's consideration. I also asked Samsung to get back to me with any comments regarding
8 this stipulation by February 28. A true and correct copy of a February 26, 2012 letter from me to
9 Samsung regarding this issue, together with the draft stipulation attached to that letter, is attached
10 hereto as Exhibit D.

11 9. Samsung's counsel asked me on February 27, 2012 to forward a Microsoft Word
12 version of our proposed stipulation. A true and correct copy of the email with this request is
13 attached hereto as Exhibit E.

14 10. I sent Samsung's counsel the requested Word version of our proposed stipulation
15 later that day. A true and correct copy of my email doing so is attached hereto as Exhibit F.

16 11. Samsung did not respond to Apple's proposal on February 28, 2012.

17 12. On February 29, 2012, I again asked Samsung for comments to our proposed
18 stipulation. A true and correct copy of my email doing so is attached hereto as Exhibit G.

19 13. Samsung's counsel never responded to my email.
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21 I declare under penalty of perjury that the foregoing is true and correct. Executed on
22 March 9, 2012, at Palo Alto, California.

23 /s/ Marc J. Pernick

24 Marc J. Pernick
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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 Marc J. Pernick has concurred in this filing.

Dated: March 9, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs