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 14 INC. and SAMSUNG
 TELECOMMUNICATIONS AMERICA, LLC
 15

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
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19 APPLE INC., a California corporation,
 20 Plaintiff,
 21 vs.
 22 SAMSUNG ELECTRONICS CO., LTD., a
 Korean business entity; SAMSUNG
 23 ELECTRONICS AMERICA, INC., a New
 York corporation; SAMSUNG
 24 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 25 Defendant.
 26

CASE NO. 11-cv-01846-LHK
**DECLARATION OF DIANE C.
 HUTNYAN IN SUPPORT OF
 SAMSUNG'S OPPOSITION TO APPLE'S
 MOTION FOR CLARIFICATION OF
 APRIL 12 ORDER**

1 I, Diane C. Hutnyan, declare:

2 1. I am a partner in the law firm of Quinn Emanuel Urquhart & Sullivan, LLP,
3 counsel for Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung
4 Telecommunications America, LLC (collectively, "Samsung"). I submit this declaration in support
5 of Samsung's Opposition to Apple's Motion for Clarification of April 12 Order. I have personal
6 knowledge of the facts set forth in this declaration and, if called upon as a witness, I could and
7 would testify to such facts under oath.

8 **Apple's Refusal to Cooperate with Samsung in Obtaining Third Party Consent for**
9 **Production of CBI from Related Cases**

10 2. In request No. 75 of its First Set of Requests for Production ("RFP"), served on
11 August 3, 2011, Samsung requested that Apple produce: "All DOCUMENTS relating to any
12 lawsuit, administrative proceeding, or other proceeding involving any of the APPLE ACCUSED
13 PRODUCTS, APPLE IP, or patents related to the APPLE PATENTS-IN-SUIT, including, without
14 limitation, any pleading, paper, motion, affidavit, declaration, report, decision, or order, for cases
15 to include, without limitation, C11-80169 MISCJF (HRL) (N.D. Cal.), 337-TA-794 (ITC),
16 1:2010cv23580 (S.D. Fla.), 1:2010 cv06385 (N.D. Ill.), 1:2010cv06381 (N.D. Ill.), 337-TA-745
17 (ITC), 1:2010cv00166 (D. Del.), 1:2010cv00167 (D. Del.), 337-TA-724 (ITC), 3:2010cv00249
18 (W.D. Wisc.), and 337-TA-701 (ITC)."

19 3. Apple refused to produce responsive documents to Samsung's Request for
20 Production No. 75. In December, Samsung moved to compel Apple to produce materials from
21 those related proceedings involving Motorola. Accepting Apple's representations that it had
22 produced all responsive materials from the Motorola actions save some Motorola confidential
23 business information ("CBI") that it had redacted, the Court denied Samsung's motion as moot in
24 its December 22 Order. Dkt. 536.

25 4. In its opposition to Samsung's December motion, Apple argued that it would need
26 third party consent to produce unredacted documents. Apple did not, however, argue that it would
27 not be permitted under the Protective Order in the Motorola ITC action to disclose the materials
28 Samsung was seeking even if compelled by this Court.

1 5. Also in its December 22 Order, the Court set up a procedure going forward for how
2 the parties would address issues of third party confidential business information contained in
3 documents Apple was required to produce in response to RFP No. 75. Specifically, the Court
4 explained that "[t]he parties have initiated a process whereby Samsung will seek consent from
5 those third parties for Apple to produce the unredacted information. Should this process prove
6 unsuccessful, Samsung is free to request court intervention and properly brief the issue of
7 disclosing confidential third-party documents."

8 6. On February 3, Samsung wrote to Apple, informing it that Apple had not
9 sufficiently complied with RFP No. 75. Attached hereto as **Exhibit A** is a true and correct copy of
10 this correspondence. The parties discussed the issue at the February 6 lead counsel meet and
11 confer, at which Apple represented that it could not produce some of these materials without
12 consent from certain third parties, namely Google, Amtel, HTC, Motorola and Nokia. Prior to this
13 meeting, Samsung was not aware that any confidential business information from HTC, Nokia or
14 Amtel was implicated by these materials, as Apple had never mentioned this. Samsung also
15 requested that Apple provide a list of those related proceedings that bore a technological nexus to
16 this action, such that production of materials from those actions would be required under the
17 Court's order. Because Apple was a party to each of these actions, it was in the superior position
18 to compile a comprehensive list of these actions.

19 7. Apple never responded to Samsung's request for a list of relevant related
20 proceedings. Hearing no response, on February 8, Samsung identified 13 proceedings it believed
21 might have a technological nexus, and requested that Apple identify all third parties whose
22 confidential business information would be implicated in these actions. Attached hereto
23 as **Exhibit B** is a true and correct copy of this correspondence.

24 8. On February 10, Apple responded to Samsung's letter, stating that it would not
25 produce materials from related proceedings other than deposition transcripts. It also stated that it
26 would not produce anything until Samsung obtained consents from third parties, but would
27 promptly do so thereafter. Attached hereto as **Exhibit C** is a true and correct copy of this
28 correspondence.

1 9. On February 13, Samsung again requested identification of all cases with a
2 technological nexus to the issues in this case, identification of all third-party CBI that is at issue,
3 reassurance that Apple's only objection to production of the relevant materials from these cases
4 was CBI approval, and reassurance that all the requested materials would be produced
5 immediately upon clearance to produce any CBI material therein. Apple never responded to this
6 request. Attached hereto as **Exhibit D** is a true and correct copy of this correspondence.

7 10. On February 19, Samsung wrote again to Apple to confirm that "Samsung
8 understands that the case records for some of these actions contain the confidential business
9 information of other entities, namely Google, Amtel, HTC, Motorola and Nokia." Samsung also
10 informed Apple that it had obtained permission from Google and Amtel to review their
11 confidential business information, insofar as it was implicated by the materials requested by
12 Samsung. While the consent from Google was limited "to technical materials, such as those
13 regarding validity and infringement issues, and does not extend to any documents concerning
14 purely business information such as agreements with OEMs," Google represented to Samsung that
15 this qualified consent was sufficient, so that Apple could still disclose all materials being sought
16 by Samsung. The consent Samsung received from Amtel was not qualified. Apple made no
17 response to Samsung's letter. Attached hereto as **Exhibit E** is a true and correct copy of this
18 correspondence.

19 11. On February 24, Samsung wrote again to Apple regarding its efforts to obtain
20 consents from the relevant third parties. Samsung informed Apple that Nokia and Motorola would
21 not be able to provide their consent without knowing more about the specific documents in
22 Apple's possession that purportedly contained their confidential business information. Samsung
23 requested Apple furnish this information, but Apple ignored this request. Attached hereto as
24 **Exhibit F** is a true and correct copy of this correspondence.

25 12. On February 29, Apple wrote to Samsung regarding the production of materials
26 from related proceedings. Apple wrote that it "appreciate[d] that Samsung ha[d]provided a list of
27 cases," but chose not to contribute to the refinement or finalization of this list. Apple also
28 reiterated its position that it would not produce any materials from related actions until Samsung

1 cleared consents from third parties. Apple made no mention of the fact that Samsung had already
2 obtained consent from Google or Amtel and it did not object to the scope of these consents or
3 Samsung's representations thereto. Nor did Apple add any additional third parties to the list of
4 entities whose confidential business information would be implicated. Attached hereto
5 as **Exhibit G** is a true and correct copy of this correspondence.

6 13. On March 1, Samsung wrote to Apple to inform it that Samsung had obtained
7 consent from HTC. Attached hereto as **Exhibit H** is a true and correct copy of this
8 correspondence.

9 14. On March 3, Samsung wrote to Apple again, narrowing its list of related
10 proceedings to nine actions. Samsung reminded Apple that for those materials as to which third
11 party consent was an issue, it had promised to produce those materials once consent had been
12 obtained, but that Apple had never produced the materials containing Google, Amtel or HTC
13 confidential business information, despite the fact that Samsung had obtained these consents.
14 Apple made no response to this letter. Attached hereto as **Exhibit I** is a true and correct copy of
15 this correspondence.

16 15. On March 7, Samsung filed under seal a motion to compel materials from related
17 proceedings (Dkt. 782).

18 16. On March 21, Apple filed its opposition to Samsung's motion. In support of its
19 position, Apple made no reference to ITC protective orders, nor to any additional third parties.
20 (Dkt. 825). As with Samsung's prior motion to compel materials from the Motorola ITC
21 investigation, Apple did not argue that it would not be permitted under the Protective Order in the
22 various ITC investigations at issue to disclose the materials Samsung sought even if compelled by
23 this Court.

24 17. On March 23, Samsung wrote to Apple to inform it that Samsung had obtained
25 consent from Nokia. Attached hereto as **Exhibit J** is a true and correct copy of this
26 correspondence. Nokia's consent was limited to certain materials that, it had represented to
27 Samsung, constituted the collection of relevant materials from that case.

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1 18. At the hearing on April 10, the issue of third-party CBI was discussed but Apple
2 again did not argue that any protective orders required consent from the third parties to produce
3 their CBI, even if the Court ordered those materials to be produced. Apple argued that the
4 consents that Samsung had obtained from Google, HTC, Atmel and Nokia were "complicated" but
5 never suggested that their scope was too narrow to cover the materials that Samsung was
6 requesting, or that it would require direct written authorization from the third parties' counsel
7 before it would honor the consents Samsung had obtained.

8 **Apple's Failure to Seek Third Party Consent Following the April 12 Order Until Two Days**
9 **Prior to the Compliance Deadline**

10 19. Following the Court's April 12 Order, Samsung did not hear from Apple about its
11 compliance with the Order for 10 days. On April 22, five days before Apple's compliance
12 deadline under the Order, Apple wrote to Samsung, stating that "the problem of third party
13 Confidential Business Information remains a barrier to production despite the April 12 Order," and
14 arguing for the first time that "[i]t does not appear that [the protective orders in the related cases]
15 authorize Apple to disclose other parties' (or nonparties') Confidential Business Information
16 pursuant to an order issued in another case (or, in the case of the ITC proceedings, another court)."
17 Apple also informed Samsung for the first time that "the Confidential Business Information of
18 more than five third parties is included in the nonpublic court documents filed in the [eight related
19 cases]." A true and correct copy of this letter is attached hereto as **Exhibit K**.

20 20. Samsung responded to this letter on April 24, 2012. Samsung noted that "if Apple
21 truly believed this Court could not order unredacted production without causing Apple to violate
22 another protective order, it could have presented that argument, and supporting evidence, to the
23 Court in its opposition to either or both of Samsung's motions to compel. But it did not do so...."
24 Samsung also informed Apple that Samsung had not previously sought the consent of third parties
25 other than Nokia, Atmel, Google, HTC and Motorola because Apple had not previously identified
26 any third parties except these five. Samsung accordingly urged Apple to obtain the consent of any
27 third parties whose identities Apple had withheld in order to comply with the April 12 Order. A
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1 true and correct copy of this letter is attached hereto as **Exhibit L**. Though Apple sent subsequent
2 letters to Samsung, it has not responded to the points above from Samsung's April 24 letter.

3 21. On April 26, the day before its compliance deadline under the April 12 Order,
4 Apple filed a motion in four ITC investigations (ITC 797, ITC 714, ITC 750 and ITC
5 745) informing the ITC of this Court's April 12 Order and seeking "authorization" to produce the
6 materials compelled in the April 12 Order containing. A true and correct copy of this motion is
7 attached hereto as **Exhibit M**. The individuals and entities whose confidential information Apple
8 sought to authorization to disclose in this motion include Thomas L. Cronan, III, Jefferson Han,
9 Perceptive Pixel, Wi-Fi Alliance, Atmel Corp., AT&T, Cetecom Inc., Google, Inc., IBM,
10 Synaptic, Marvell, Microsoft, New York University, Hewlett Packard, Qualcomm, TED
11 Conferences, LLC, Texas Instruments, Dominic Tolli, University of Delaware, Deborah S.
12 Coutant and Sean DeBruine.

13 22. On April 27, the day after Apple filed the present motion, Samsung wrote to
14 Apple regarding Apple's statements in its motion regarding additional, unidentified third parties
15 whose consent Apple claimed to need. Samsung requested that Apple identify (1) the names of
16 the 15 new third parties from which it now claimed for the first time it needed consent, (2) the
17 proceedings in which their confidential business information is implicated, (3) the number of
18 documents that contain their confidential business information, and (4) the titles of such
19 documents. Samsung also requested copies of the notices that Apple said it sent to the third
20 parties, along with any responses received by Apple and any other related correspondence. A true
21 and correct copy of this email is attached hereto as **Exhibit N**.

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1 23. Apple did not respond to Samsung's request for this information until the afternoon
2 of April 30, the same day Samsung's response to Apple's motion was due and three days after
3 Apple's deadline for compliance with the April 12 Order. The correspondence with third parties
4 Apple attached to its response shows that Apple only began seeking third party consent on April
5 25, two days prior to Apple's compliance deadline under the April 12 Order. A true and correct
6 copy of this letter and its attachments is attached hereto as **Exhibit O**.

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8 I declare under penalty of perjury under the laws of the United States that the foregoing is
9 true and correct.

10 Executed in Los Angeles, California, on April 30, 2012.

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12 */s/ Diane C. Hutnyan*

13 Diane C. Hutnyan
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General Order 45 Attestation

I, Victoria F. Maroulis, 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 Diane C. Hutnyan has concurred in this filing.

/s/ Victoria Maroulis