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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
 ESTHER KIM IN SUPPORT OF
 APPLE INC.'S MOTION FOR
 ADVERSE INFERENCE JURY
 INSTRUCTIONS DUE TO
 SAMSUNG'S SPOILIATION OF
 EVIDENCE**

Date: June 7, 2012
 Time: 1:30 p.m.
 Place: Courtroom 8, 4th Floor
 Judge: Hon. Lucy H. Koh

27 **REDACTED PUBLIC VERSION**

1 I, Esther Kim, declare as follows:

2 1. I am an associate in the law firm of Morrison & Foerster LLP, counsel for Apple
3 Inc. (“Apple”). I am licensed to practice law in the State of California. Unless otherwise
4 indicated, I have personal knowledge of the matters stated herein or understand them to be true
5 from other members of my litigation team. I make this Declaration in support of Apple’s Motion
6 for Adverse Inference Jury Instructions Due to Samsung’s Spoliation of Evidence.

7 2. Certain exhibits to this Declaration consist of Korean-language documents
8 produced by Samsung in this action. To the extent time has permitted, Apple has obtained
9 certified translations of the documents and submits those translations herewith along with each
10 Korean original. For the remaining Korean-language documents, Apple has obtained non-
11 certified translations and submits those herewith along with the Korean original.

12 3. Attached hereto as **Exhibit 1** is a true and correct copy of a translation of the
13 Republic of Korea’s Fair Trade Commission (“KFTC”) Press Release dated March 16, 2012,
14 which was obtained from the official website of the KFTC, at the address:
15 http://www.ftc.go.kr/news/ftc/reportView.jsp?report_data_no=4688&report_data_div_cd=&tribu
16 [_type_cd=&currpage=6&searchKey=&searchVal=&startdate=&enddate=](http://www.ftc.go.kr/news/ftc/reportView.jsp?report_data_no=4688&report_data_div_cd=&tribu) (last accessed on
17 April 29, 2012).

18 4. Under my supervision, contract attorneys for Morrison & Foerster reviewed the
19 custodial documents Samsung produced for witnesses who were deposed by Apple—documents
20 produced in this action, as well as documents produced in the matter of *Certain Electronic Digital*
21 *Media Devices and Components Thereof*, Investigation No. 337-TA-796, pending in the
22 International Trade Commission (“ITC action”). The contract attorneys tallied the number of
23 emails within the custodial documents for each witness. [REDACTED]

24 [REDACTED]

25 [REDACTED]

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Deponent	Date of deposition	No. of Emails	Total No. of Custodial Documents
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1
[REDACTED]	[REDACTED]	1	1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. Attached hereto as **Exhibit 2** is a true and correct copy of the document produced by Samsung beginning with Bates number SAMNDCA00514571, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. A true and correct copy of a certified translation is included.

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7. Minhyouk Lee [REDACTED]

[REDACTED]

8. Joon-II Choi [REDACTED]

[REDACTED]

9. Attached hereto as **Exhibit 3** is a true and correct copy of the document produced by Samsung beginning with Bates number SAMNDCA00513783, [REDACTED]

[REDACTED]

A true and correct copy of a certified translation is included.

10. Don-Joo Lee [REDACTED]

[REDACTED]

11. Attached hereto as **Exhibit 4** is a true and correct copy of the document produced by Samsung beginning with Bates number SAMNDCA00515899, [REDACTED]

[REDACTED]

A true and correct copy of a translation is included.

12. Attached hereto as **Exhibit 5** is a true and correct copy of the document produced by Samsung beginning with Bates number SAMNDCA00509359, [REDACTED]

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[REDACTED]

[REDACTED] A true and correct copy of a translation is included.

13. Ioi Lam [REDACTED]

[REDACTED]

14. [REDACTED]

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[REDACTED]

15. Samsung produced [REDACTED]

16. Attached hereto as **Exhibit 6** is a true and correct copy of the document produced by Samsung beginning with Bates number SAMNDCA00229449, [REDACTED]

17. Attached hereto as **Exhibit 7** is a true and correct copy of the document produced by Samsung beginning with Bates number SAMNDCA00229399, [REDACTED]

true and correct copy of a translation is included.

18. Dong Hoon Chang [REDACTED]

19. Attached hereto as **Exhibit 8** is a chart that lists 14 key documents [REDACTED]

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[REDACTED]

20. Nara Cho [REDACTED]

[REDACTED]

21. Wookyun Kho, Junho Park, Ahyoung Kim, Hyejung Lee, Oh Chae Kwon, and Mincheol Shin [REDACTED]

[REDACTED]

22. Samsung produced [REDACTED]

[REDACTED]

23. Attached hereto as **Exhibit 9** is a true and correct copy of Samsung's Second Supplemental and Amended Identification of Custodians, Litigation Hold Notices and Search Terms, dated February 26, 2012, and Exhibits A, C, D, E, G, I, J, K, and S thereto.

24. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from the transcript of the deposition of Kyu Hyuk Lee taken on March 8, 2012.

25. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the transcript of the deposition of Kyu Hyuk Lee taken on February 10, 2012, in the ITC action.

26. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the transcript of the deposition of Joo Hyuk Kang on February 6, 2012, in the ITC action.

1 27. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts from the
2 transcript of the deposition of Kang Hyun Lee on February 3, 2012, in the ITC action.

3 28. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the
4 transcript of the deposition of Se-Hyun Cho on February 20, 2012, in the ITC action.

5 29. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the
6 transcript of the deposition of Seongho Won on March 12, 2012, in the ITC action.

7 30. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from the
8 transcript of the deposition of Joon-II Choi on March 20, 2012, in the ITC action.

9 31. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts from the
10 transcript of the deposition of Kyu Hyung Lee on March 15, 2012, in the ITC action.

11 32. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts from the
12 transcript of the deposition of Junho Park on January 14, 2012.

13 33. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts from the
14 transcript of the deposition of WooUp Kwon on April 11, 2012, in the ITC action.

15 34. Attached hereto as **Exhibit 20** is a true and correct copy of excerpts from the
16 transcript of the deposition of Jaehwang Sim taken on March 31, 2012.

17 35. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the
18 transcript of the deposition of Corey Kerstetter taken on March 29, 2012.

19 36. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts from the
20 transcript of the deposition of Hyun Goo Woo taken on March 6, 2012.

21 37. Attached hereto as **Exhibit 23** is a true and correct copy of Exhibit 5 to the
22 deposition of Michael Finnegan taken on March 1, 2012, in the ITC action.

23 38. Attached hereto as **Exhibit 24** is a true and correct copy of the document produced
24 by Samsung beginning with Bates number S-ITC-003006124, which is the Samsung Mobile
25 Organizational Chart. A true and correct copy of a certified translation is included.

26 39. Attached hereto as **Exhibit 25** is a true and correct copy of excerpts from the
27 transcript of the deposition of Wookyun Kho taken on January 12, 2012.

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1 40. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts from the
2 transcript of the deposition of Junho Park taken on January 14, 2012.

3 41. Attached hereto as **Exhibit 27** is a true and correct copy of excerpts from the
4 transcript of the deposition of Ahyoung Kim taken on January 11, 2012.

5 42. Attached hereto as **Exhibit 28** is a true and correct copy of excerpts from the
6 transcript of the deposition of Hyejung Lee taken on March 28, 2012.

7 43. Attached hereto as **Exhibit 29** is a true and correct copy of excerpts from the
8 transcript of the deposition of Oh Chae Kwon taken on March 30, 2012.

9 44. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts from the
10 transcript of the deposition of Mincheol Shin taken on January 12, 2012.

11 45. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the
12 transcript of the deposition of Nara Cho taken on January 14, 2012.

13 46. Attached hereto as **Exhibit 32** is a true and correct copy of excerpts from the
14 transcript of the hearing held on May 20, 2011, in *Fractus v. Samsung Electronics Co., Ltd.*, No.
15 6:09-cv-203-LED, in the Eastern District of Texas.

16 47. On July 11, 2011, Apple sent Samsung a letter to confirm that Samsung had steps
17 to preserve evidence and fulfill its document preservation obligations. Attached hereto as
18 **Exhibit 33** is a true and correct copy of this letter. The letter raised Samsung's prior difficulties
19 with document preservation, *i.e.*, *Mosaid Techs., Inc. v. Samsung Elecs. Co.*, 348 F. Supp. 2d 332,
20 336,340 (D.N.J. 2004) (sanctioning Samsung and related entities for destroying relevant
21 electronic mail after lawsuit filed); *Fractus, S.A. v. Samsung Elecs. Co.*, No. 09-cv-203 (E.D.
22 Tex.) (trial transcript referring to Samsung's continued policy of deleting electronic mail every
23 two weeks, even after lawsuit filed).

24 48. Attached hereto as **Exhibit 34** is a true and correct copy of the document produced
25 by Samsung beginning with Bates number SAMNDCA10247537, [REDACTED]
26 [REDACTED] A true and correct copy of a
27 translation is included.

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49. Attached hereto as **Exhibit 35** is a true and correct copy of the document produced by Samsung beginning with Bates number SAMNDCA10247373, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] A true and correct copy of a certified translation is included.

I declare under penalty of perjury that the foregoing is true and correct. Executed May 1, 2012, at San Francisco, California.

/s/ Esther Kim
Esther Kim

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ATTESTATION OF E-FILED SIGNATURE

I, Harold J. McElhinny, 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 Esther Kim has concurred in this filing.

Dated: May 1, 2012

/s/ Harold J. McElhinny
Harold J. McElhinny