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10 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

16 APPLE INC., a California corporation,
 17 Plaintiff,
 18 v.
 19 SAMSUNG ELECTRONICS CO., LTD., a
 Korean business entity; SAMSUNG
 20 ELECTRONICS AMERICA, INC., a New York
 corporation; SAMSUNG
 21 TELECOMMUNICATIONS AMERICA, LLC, a
 Delaware limited liability company,
 22 Defendants.
 23

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

**DECLARATION OF JASON
 BARTLETT IN SUPPORT OF
 APPLE'S PETITION FOR
 ATTORNEYS' FEES PURSUANT TO
 THE COURT'S APRIL 23 ORDER**

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 28

1 I, Jason Bartlett, declare as follows:

2 I am a partner at Morrison & Foerster LLP, counsel for Apple Inc. (“Apple”) in this
3 action. I make this declaration based on personal knowledge and could testify competently to the
4 facts stated herein. On April 23, 2012, this Court granted in part Apple’s Motion for 37(b)(2)
5 Sanctions, and it awarded Apple its “fees and expenses incurred in connection with Apple’s
6 motion to compel that resulted in the December 22 Order.” (Dkt. No. 880 at 9 (“Sanctions
7 Order”).) This Declaration details those fees.

8 **I. INTRODUCTION**

9 1. In December 2011, Apple filed a motion to compel because Samsung had failed to
10 produce four key categories of documents: (1) source code and other technical documents
11 showing the operation of the allegedly infringing product features; (2) design history documents,
12 including CADs, sketchbooks, etc.; (3) e-mails and other documents showing Samsung’s analysis
13 and consideration of Apple and Apple products; and (4) relevant survey and marketing
14 documents. This motion resulted in the December 22 Order. (*See* Dkt. No. 537 (“December 22
15 Order”).) The Court has awarded Apple its fees arising from Samsung’s failure to produce one of
16 the four categories of documents. (Dkt. No. 880 at 9.) Based on time records of those individuals
17 involved in developing the facts underlying and writing the motion, I and individuals working at
18 my direction have identified the fees incurred in connection with obtaining the December 22
19 Order. Apple requests that the Court award one-fourth of the fees associated with the
20 December 22 motion as a reasonable apportionment of the total effort associated with the motion.

21 **II. THE MOTION TO COMPEL THAT RESULTED IN THE DECEMBER 22**
22 **ORDER**

23 2. Eight attorneys were involved in assessing Samsung’s deficient production,
24 researching the parties’ negotiation history, and subsequently preparing the motion that resulted
25 in the December 22 Order: Richard Hung, Jason Bartlett, Mia Mazza, Minn Chung,
26 Marcelo Guerra, Nate Sabri, Esther Kim and Euborn Chiu. Paralegal support for the filing was
27 provided by Rosemary Barajas. Richard Hung, Jason Bartlett, and Michael Jacobs attended the
28 hearing, and Michael Jacobs argued the motion.

1 3. Starting in late November, a team of Morrison & Foerster attorneys began to
2 analyze the various deficiencies in Samsung's production. This analysis led to the preparation of
3 the motion granted on December 22, 2011. I managed this work, with the assistance of
4 Richard Hung. Mia Mazza and associate Marcelo Guerra were principally involved in analyzing
5 Samsung's deficient production and then preparing the motion to compel. Associates Nate Sabri,
6 Esther Kim, and Euborn Chiu assisted with the analysis and drafting.

7 4. In all, approximately 196 attorney hours were spent analyzing the production and
8 preparing and filing the motion, its two supporting declarations and 22 exhibits, and the ancillary
9 motions to seal and to shorten time. Around 16 paralegal hours were spent on the filing. An
10 additional 20 attorney hours were spent by Richard Hung, Michael Jacobs, and me to prepare and
11 argue the motion at the hearing.

12 5. Total fees incurred by Apple in connection with the December 22 Order were
13 \$116,669. Apple therefore seeks recovery of one-fourth of these fees, or \$29,167. Although
14 Apple also incurred costs as a result of having to file its motion, no costs are included in this
15 request.

16 6. Attached hereto as Exhibit 1 is a true and accurate chart prepared by individuals
17 working under my direction that totals the hours worked by each of the above individuals in
18 connection with the motion. The chart sets forth the total time spent on the motion, the total cost
19 in fees incurred by Apple, and the average attorney billing rates charged.

20 **III. THE TOTAL AMOUNT OF TIME INCURRED IN CONNECTION WITH**
21 **THE DECEMBER 22 ORDER IS REASONABLE**

22 7. Considerable effort was required to develop and file the motion that led to the
23 December 22 Order. Attorneys having specialized skill in reading and understanding technical
24 and Korean language documents contributed to preparing the motion. Samsung also multiplied
25 costs associated with the motion by making it impossible for Apple timely to complete the lead
26 trial counsel meet-and-confer process. Apple was forced to prepare an extensive history of the
27 parties' meet-and-confer record and file a separate motion for administrative relief from the lead
28 trial counsel meet and confer requirement. The Court subsequently found Apple's motion for

1 administrative relief supported by “good cause.” Thus, although Apple is not seeking recovery of
2 the time spent conferring with Samsung, the extra time spent on the motion for administrative
3 relief (which was a necessary component of the motion to compel resulting in the December 22
4 Order) reflects the extra burden put on Apple through Samsung’s failure to properly meet-and-
5 confer.

6 8. Apple also incurred significant costs associated with preparing and filing a
7 separate motion to shorten time. Given Samsung’s long failure to comply with the September 28
8 Order or to produce documents responsive to Apple’s requests, Apple needed relief immediately.
9 If the motion had been delayed until after the end-of-year holidays, any subsequent order would
10 have come too late to give Apple the relief it needed before the close of discovery on March 8.
11 The Court granted Apple’s motion to shorten time.

12 9. In addition, Apple was required to prepare a separate motion to seal portions of the
13 motion to compel which contained confidential information subject to protective order.

14 10. Apple incurred significant fees in addition to the fees detailed in this motion.
15 Apple is not seeking reimbursement for the time of the Morrison & Foerster senior partners who
16 reviewed and commented the motion.

17 11. Apple is also not seeking reimbursement for many of the Korean-speaking
18 attorneys who helped search Samsung’s production and prepare summaries relied upon to frame
19 the motion to compel and supporting declarations. Although such fees were necessarily incurred,
20 time records are such that I am unable to determine with reasonable precision how much effort
21 was specifically directed to the motion at issue. Accordingly, the fees addressed in this
22 declaration are limited to those associated with analyzing the information provided by document
23 review attorneys and summarizing the deficiencies in the production in the briefing that led to the
24 December 22 Order.

25 **IV. THE RATES CHARGED IN CONNECTION WITH THE DECEMBER 22**
26 **ORDER ARE CONSISTENT WITH PREVAILING INDUSTRY RATES**

27 12. The following section describes the attorneys and staff who contributed to
28 preparing, filing, and arguing the motion; it also discusses Morrison & Foerster’s rates and time-

1 keeping practices for this litigation. The rates charged are comparable to the median rates
2 reported in the American Intellectual Property Law Association (the “AIPLA”) Economic Survey
3 Report. Based on publically available information, Morrison & Foerster’s rates are also
4 comparable to the rates charged by Samsung’s own outside counsel.

5 **A. Morrison & Foerster Attorneys**

6 13. **Michael Jacobs.** Michael Jacobs is the co-founder of the firm’s Intellectual
7 Property Practice Group. Mr. Jacobs concentrates his practice on litigation of high-technology
8 and intellectual property matters. He has represented information technology and life sciences
9 companies in over 35 patent lawsuits. Mr. Jacobs has twice won the *California Lawyer Attorneys*
10 of the Year (CLAY) award, one for his advocacy on behalf of Intel in the *Intel v. Hamidi*
11 “trespass to chattels” case and this year for his defense of Novell in *SCO v. Novell*. Mr. Jacobs is
12 co-lead counsel to Apple in this litigation. He argued the motion that led to the December 22
13 Order.

14 14. **Richard Hung.** Richard Hung has litigated a wide variety of complex technology
15 matters for clients in state and federal trial and appellate courts. His patent litigation matters have
16 spanned technologies such as internet search and advertising, digital rights management and
17 encryption, programmable logic devices, electronic books, and anticancer therapeutics. Mr. Hung
18 is responsible for overseeing many of the day-to-day aspects of this case, and he acted as a
19 conduit for information between the team and the client in preparing the motion. Mr. Hung
20 worked with Apple on finalizing the motion that led to the December 22 Order and hearing
21 preparation.

22 15. **Jason Bartlett.** I have represented international and domestic companies as both
23 plaintiffs and defendants in matters involving information technology, wireless
24 telecommunications standards, biotechnology, medical devices, computer hardware, and heavy
25 industry. I am the former Co-Chair of Morrison & Foerster’s E-Discovery Task Force. Together
26 with Ms. Mazza, I have co-managed Apple’s discovery efforts in this litigation and have helped
27 draft Apple’s motions to compel, including the instant motion. I also assisted in preparations for
28 the hearing on the motion.

1 16. **Mia Mazza.** Mia Mazza is the founder and current Chair of Morrison &
2 Foerster's E-Discovery Task Force. In this role she leads a team of Litigation partners that acts as
3 an internal resource for all litigators in helping solve e-discovery challenges as they arise in
4 practice. Ms. Mazza's expertise in complex litigation and e-discovery has made her an essential
5 member of this team. Ms. Mazza has co-managed Apple's discovery efforts in this litigation and
6 has helped draft Apple's motions to compel where necessary. Ms. Mazza had primary
7 responsibility for supervising the preparation of motion to compel that led to the December 22
8 Order. Because Ms. Mazza had first-hand knowledge of the meet-and-confer issues related to the
9 motion, she also took the lead on drafting the complicated administrative motion for relief from
10 the lead trial counsel meet-and-confer requirement.

11 17. **Minn Chung.** Minn Chung's practice focuses on intellectual property litigation.
12 Mr. Chung has represented a number of high-technology clients in multi-patent, multi-district,
13 patent litigation matters involving wide-ranging areas of technology, including plasma display
14 panels, CPU architecture, parallel processing computer technology, device drivers, and
15 semiconductor memory devices. Mr. Chung's technical and Korean-language skills have made
16 him invaluable in supporting the discovery efforts in this litigation. Mr. Chung was involved in
17 assessing the deficiencies in Samsung's production, and he prepared one of the declarations
18 supporting the motion.

19 18. **Marcelo Guerra.** Marcelo Guerra has worked at Morrison & Foerster since
20 graduating from Harvard Law School in 2004. His practice is focused on patent litigation.
21 Mr. Guerra has worked on this case since the fall of 2011. He has taken a lead role in researching
22 and drafting many of Apple's briefs and coordinating discovery issues, including the motion at
23 issue here.

24 19. **Nathan Sabri.** Nathan Sabri is involved in a wide variety of intellectual property
25 matters, with an emphasis on intellectual property litigation and counseling. He has experience
26 litigating trademark and copyright infringement actions in federal court. Mr. Sabri helped
27 research issues related to copying and design history documents; he also edited and revised the
28 motion.

1 20. **Esther Kim.** Esther Kim has worked at Morrison & Foerster since graduating
2 from George Washington Law School in 2008, where she was elected to the Order of the Coif.
3 She has an undergraduate degree from Massachusetts Institute of Technology and a masters'
4 degree from the University of California, Berkeley. Ms. Kim had overall responsibility for
5 coordinating the work of Apple's Korean-language review team. Ms. Kim helped edit and revise
6 the motion based on her understanding of the deficiencies in Samsung's production. Ms. Kim
7 also helped prepare the detailed proposed order and the declarations in support of the motion.

8 21. **Euborn Chiu.** Euborn Chiu is an associate in the San Francisco office of
9 Morrison & Foerster. Mr. Chiu's expertise in electronics, software products, telecommunications
10 devices, and computer systems makes him a key member of the team. In connection with the
11 motion, Mr. Chiu performed discrete tasks in analyzing certain deficiencies in Samsung's
12 technical document production, and assisted with drafting.

13 22. **Rosemary Barajas.** Rosemary Barajas is a senior paralegal in Morrison &
14 Foerster's litigation department. Ms. Barajas helped prepare the motion for filing.

15 **B. Comparable Rates**

16 23. Every other year, the American Intellectual Property Law Association (the
17 "AIPLA") produces an Economic Survey that reports on, among other things, individual billing
18 rates for intellectual property services. I have reviewed the July 2011 edition of the AIPLA
19 Economic Survey Report and compared the rates in it to the Exhibit showing the rates charged by
20 Morrison & Foerster's attorneys. The AIPLA Economic Survey indicates that the median billing
21 rate for partners at private firms in the San Francisco Consolidated Metropolitan Statistical Area
22 was \$585 in 2010. For private law firms with 150 or more associates, the median rate for
23 associates during the same time period was \$390. The Survey does not indicate the assuredly
24 higher rate for associates in the San Francisco Consolidated Metropolitan Statistical Area.

25 24. As set forth in Exhibit 1, the median billing rate for partners and of counsel who
26 worked on this motion is \$582. The median rate for associates who worked on this motion is
27 \$398. These numbers are consistent with the numbers reported in the AIPLA Economic Survey.

1 25. Morrison & Foerster’s rates are comparable to the rates charged by Samsung’s
2 counsel, Quinn Emanuel Urquart & Hedges LLP. A bankruptcy court filing shows that in 2009,
3 “hourly rates for partners and of counsel of Quinn Emanuel range from \$970 to \$580,” and
4 “hourly rates for U.S. associates range from \$390 to \$820.” (Decl. of Andrew J. Rossman ISO
5 Debtors’ Appl. for Oder Pursuant to 11 U.S.C. §§ 327(e) and 328(a) Approving the Emp.,
6 Retention, & Subst. of Quinn Emanuel Urquhart Oliver & Hedges as Special Litig. Counsel ¶ 17,
7 *In re G-I Holdings Inc.*, Case Nos 01-30135 and 01-38790 (Bankr. D. N.J. Nov. 19, 2009).) A
8 true and correct copy of this filing, which includes additional details concerning Quinn Emanuel’s
9 rates, is attached hereto as Exhibit 2.

10 26. Morrison & Foerster’s fees for its paralegals are also comparable to those charged
11 in the community for similarly-skilled professionals. The rate charged for Ms. Barajas’s work
12 was significantly less than the lowest rate Quinn charged for paralegals in 2009. (*See id.*)

13 **C. Time-Keeping In Relation to the Motion**

14 27. Morrison & Foerster attorneys track time billed to Apple based on individual tasks.
15 This has made it possible to isolate efforts spent developing and drafting the motion which led to
16 the December 22 Order.

17
18 I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th
19 day of May, 2012, at San Francisco, California.

20 /s/ Jason Bartlett
21 Jason Bartlett
22