

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 Charles K. Verhoeven (Bar No. 170151)
 2 charlesverhoeven@quinnemanuel.com
 50 California Street, 22nd Floor
 3 San Francisco, California 94111
 Telephone: (415) 875-6600
 4 Facsimile: (415) 875-6700

5 Kevin P.B. Johnson (Bar No. 177129)
 kevinjohnson@quinnemanuel.com
 6 Victoria F. Maroulis (Bar No. 202603)
 victoriamaroulis@quinnemanuel.com
 7 555 Twin Dolphin Drive, 5th Floor
 Redwood Shores, California 94065-2139
 8 Telephone: (650) 801-5000
 Facsimile: (650) 801-5100

9 Michael T. Zeller (Bar No. 196417)
 michaelzeller@quinnemanuel.com
 10 865 S. Figueroa St., 10th Floor
 Los Angeles, California 90017
 11 Telephone: (213) 443-3000
 12 Facsimile: (213) 443-3100

13 Attorneys for SAMSUNG ELECTRONICS CO.,
 LTD., SAMSUNG ELECTRONICS AMERICA,
 14 INC. and SAMSUNG
 TELECOMMUNICATIONS AMERICA, LLC
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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
 18

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 ADAM BOGUE

1 **DECLARATION OF ADAM BOGUE**

2 I, Adam Bogue, declare:

3 1. I have personal knowledge of the facts set forth herein, and am competent to testify
4 to the same.

5 2. I am currently the President and CEO of Circle Twelve, Inc. which currently
6 manufactures and sells touch screen table devices known as the DiamondTouch Table.

7 3. I was previously the Vice President of Business Development at the Mitsubishi
8 Electric Research Laboratories ("MERL"), where I was part of the team that developed the
9 DiamondTouch table.

10 4. The DiamondTouch table is a touch-sensitive display that was originally developed
11 at MERL in 2001. The table, along with the software, was publically described in a paper entitled
12 *DiamondTouch SDK: Support for Multi-User, Multi-Touch Applications*, authored by Alan
13 Esenther, Cliff Forlines, Kathy Ryall, Sam Shipman, attached here as Exhibit 1, and made
14 publically available as MERL Technical Report No. TR2002-48 at least as early as the end of
15 2002.

16 5. The DiamondTouch table software development kit described in the TR2002-48
17 paper allows programmers to create Windows applications that can take advantage of
18 DiamondTouch. MERL employees developed many applications for the DiamondTouch system,
19 in a number of different programming languages, and publicly demonstrated those applications
20 running on DiamondTouch table in a variety of settings: MERL lobby, trade shows, academic
21 conferences, and meetings with educational institutions, potential business partners (*e.g.*, Apple
22 and Google), and public officials (*e.g.*, the New York Police Department's Real Time Crime
23 Center).

24 6. In or before January 2005, MERL introduced a separate software toolkit called
25 DTFlash that allowed programmers to write DiamondTouch-aware Macromedia/Adobe Flash
26 applications. The DTFlash toolkit was described in a paper entitled *Multi-User Multi-Touch*
27 *Games on Diamond Touch with the DTFlash Toolkit*, authored by Alan Esenther and Kent

1 Wittenberg, attached here as Exhibit 2, and made publically available as MERL Technical Report
2 No. TR2005-105 in year 2005.

3 7. In writing the DTFlash toolkit, the MERL developers created several sample Flash
4 applications that were specially created to recognize touch gestures, one of which was called
5 "Tablecloth."

6 8. The Tablecloth application was written on or before January 12, 2005 in
7 Cambridge, Massachusetts.

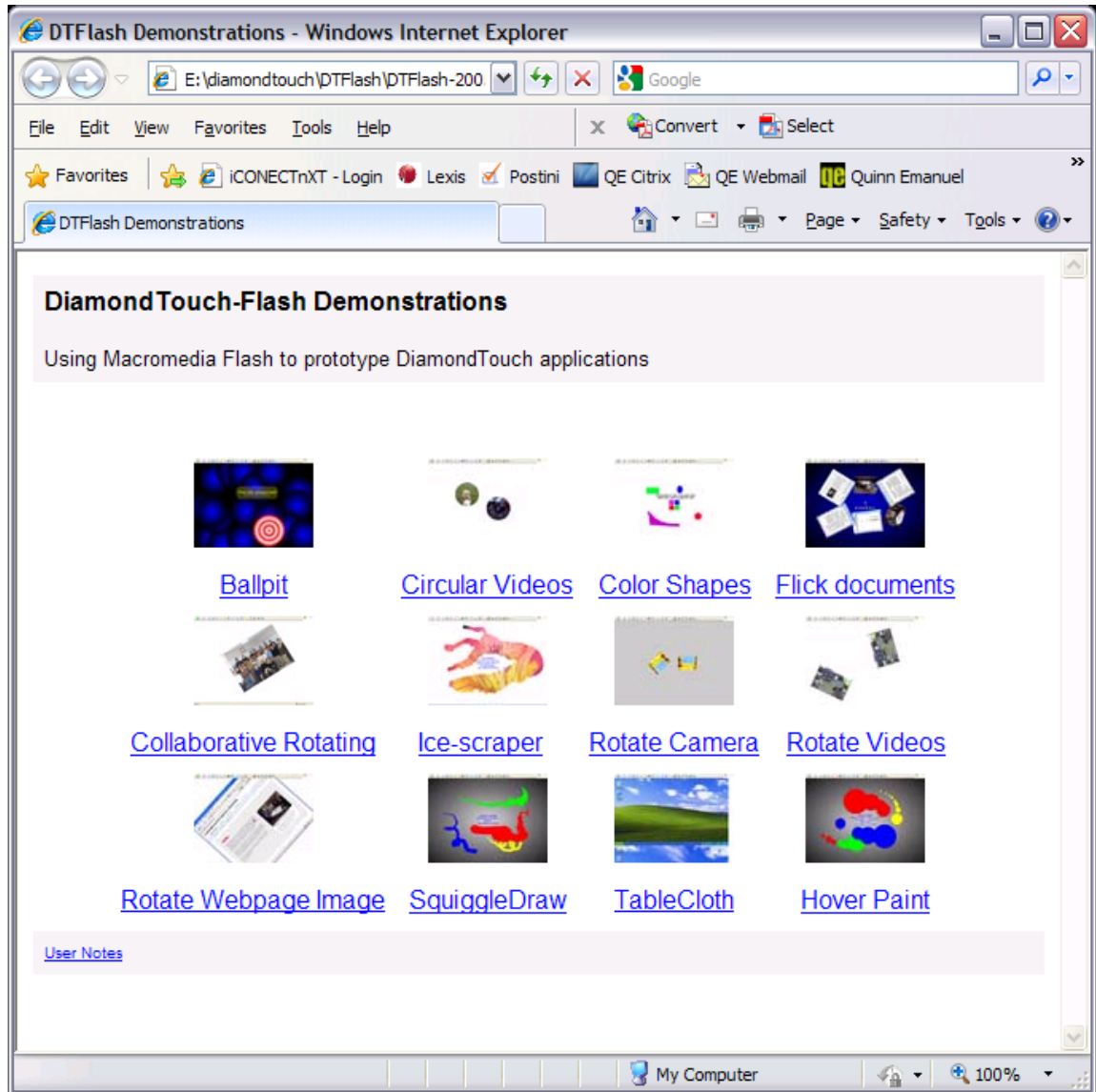
8 9. The Tablecloth application was loaded on the demo DiamondTouch table that was
9 on display in the MERL lobby in or around January 2005, located at 201 Broadway in Cambridge,
10 Massachusetts. The demo table was situated in the lobby in a high-traffic area across from the
11 receptionist's desk. It was not necessary to sign a nondisclosure agreement to enter the lobby and
12 see or use the demo table. Any visitors or delivery personnel had free access to enter the MERL
13 lobby and use the demo table. I recall demonstrating the DTFlash applications, including the
14 Tablecloth application, to visitors of the MERL lobby during that time period. The demo table in
15 the lobby was also used during demonstrations to executives as well as important visitors. The
16 DTFlash demo web page, from which the Tablecloth application could be loaded, was a shortcut
17 in Internet Explorer accessible on the lobby demo table.

18 10. There are two versions of the Tablecloth application – one dated January 12, 2005
19 that displays touch coordinate locations in the title bar and a second one dated July 17, 2006 that
20 does not display touch coordinate locations displayed in the title bar. Both versions behave the
21 same way and they were both available and demonstrated on the demo DiamondTouch table in the
22 MERL lobby.

23 11. In the DTFlash demo folders, there is a README.txt file that explains how to
24 configure settings in Internet Explorer so that anyone can run the DTFlash applications correctly.
25 A copy of the README.txt file is attached here as Exhibit 3. The demo table in the MERL lobby
26 was set according to the instructions in the README.txt file to ensure proper running of the
27 DTFlash applications, including the Tablecloth application.

28

1 12. One of my jobs at MERL was to show samples of the DiamondTouch table to
2 potential customers. It was my practice to bring a DiamondTouch table complete with many
3 DiamondTouch software demonstrations (*i.e.*, demo programs we used to show the capabilities of
4 the DiamondTouch Table to customers), including the DTFlash Demonstrations and the
5 Tablecloth application, on those sales trips.



24 I personally recall exhibiting the DTFlash Demonstrations as well as the Tablecloth
25 application to customers at least as early as 2006. In particular, I recall showing both the DTFlash
26 Demonstrations and the Tablecloth application at the Game Developers Conference in San Jose,
27 California in March 2006. At that time, I was offering to sell, and in fact was selling, the
28 DiamondTouch table to customers in the United States.

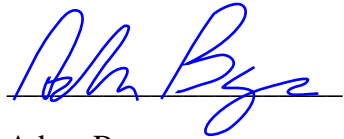
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13. I have reviewed the video files attached here as Exhibits 4 and 5. The video files show the Tablecloth application as it operated when it was first created and shown to public, including visitors of the MERL lobby and potential customers at various tradeshow, starting in or around early 2005.

14. The foregoing is based on my personal knowledge of the facts as set forth above, to the best of my knowledge and recollection. I am competent to testify to do the same, and if so called to testify, I would testify to the same.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Framingham, MA on May 17, 2012



Adam Bogue