

1 HAROLD J. MCELHINNY (CA SBN 66781)
 hmcclhinny@mofo.com
 2 MICHAEL A. JACOBS (CA SBN 111664)
 mjacobs@mofo.com
 3 JENNIFER LEE TAYLOR (CA SBN 161368)
 jtaylor@mofo.com
 4 ALISON M. TUCHER (CA SBN 171363)
 atucher@mofo.com
 5 RICHARD S.J. HUNG (CA SBN 197425)
 rhung@mofo.com
 6 JASON R. BARTLETT (CA SBN 214530)
 jasonbartlett@mofo.com
 7 MORRISON & FOERSTER LLP
 425 Market Street
 8 San Francisco, California 94105-2482
 Telephone: (415) 268-7000
 9 Facsimile: (415) 268-7522

WILLIAM F. LEE
 william.lee@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 60 State Street
 Boston, MA 02109
 Telephone: (617) 526-6000
 Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
 mark.selwyn@wilmerhale.com
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 950 Page Mill Road
 Palo Alto, California 94304
 Telephone: (650) 858-6000
 Facsimile: (650) 858-6100

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

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

16 APPLE INC., a California corporation,
 17

18 Plaintiff,

19 v.

20 SAMSUNG ELECTRONICS CO., LTD., a
 Korean corporation; SAMSUNG
 21 ELECTRONICS AMERICA, INC., a New
 York corporation; and SAMSUNG
 22 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,

23 Defendants.
 24

Case No. 11-cv-01846-LHK

**DECLARATION OF CYNDI WHEELER IN
 SUPPORT OF SAMSUNG'S
 ADMINISTRATIVE MOTION TO FILE
 DOCUMENTS UNDER SEAL RE
 SAMSUNG'S MOTION FOR SUMMARY
 JUDGMENT**

1 I, Cyndi Wheeler, hereby declare as follows:

2 1. I am an attorney for Apple Inc. (“Apple”). I submit this declaration in support of
3 Samsung’s Administrative Motion to File Under Seal (D.N. 930) pursuant to Local Rules 7-11
4 and 79-5. I have personal knowledge of the matters set forth below. If called as a witness I could
5 and would competently testify as follows.

6 2. Samsung’s Motion for Summary Judgment, the Declaration of Brett Arnold in
7 Support of Samsung’s Motion for Summary Judgment, the Declaration of Andries Van Dam in
8 Support of Samsung’s Motion for Summary Judgment, the Declaration of Clifton Forlines in
9 Support of Samsung’s Motion for Summary Judgment, the Declaration of Brian von Herzen in
10 Support of Samsung’s Motion for Summary Judgment, the Declaration of Stephen Gray in
11 Support of Samsung’s Motion for Summary Judgment, and the Exhibits to these Declarations
12 contain Apple-confidential information. (See Declaration of Bill Trac in Support of Samsung’s
13 Administrative Motion to File Documents Under Seal [D.N. 930-3]). A description of these
14 documents follows.

15 3. Exhibits 3 and 15 to the Arnold Declaration are excerpts from the Ive Deposition
16 and photographs of a highly confidential Apple model. These documents contain trade secret
17 information reflecting Apple’s product design process and non-public, confidential information
18 about Apple’s products. This information is highly sensitive and could be used by Apple’s
19 competitors to Apple’s disadvantage. These entire documents should be under seal.

20 4. Exhibit 37 to the Arnold Declaration is Apple Inc.’s Amended Objections and
21 Responses to Samsung’s Interrogatory Nos. 4, 6, 7, 16, 17, and 18. It contains highly confidential
22 and commercially sensitive business information, including confidential information regarding
23 licensing agreements and potential licensing agreements with business partners and Apple’s
24 advertising expenditures. A proposed redacted version is attached as **Exhibit 1**.

25 5. Exhibits 38-39 and 42-45 to the Arnold Declaration are exhibits from the de Iuliis,
26 Howarth, Zorkendorfer, Rohrbach, Whang and Satzger depositions, respectively. They contain
27 trade secret information reflecting Apple’s product design process and references to physical
28

1 design models Apple possesses. Proposed redacted versions are attached as **Exhibits 2-7**,
2 respectively.

3 6. Exhibits 49 and 73 to the Arnold Declaration are duplicate copies of the Expert
4 Report of Russell Winer. The report contains discussion of Apple's strategy regarding the design
5 and composition of its advertisements. Public disclosure of such commercially sensitive
6 information is inappropriate as it would provide competitors with inside information about how
7 Apple designs its advertisements, a process in which Apple has invested significant time and
8 money and that Apple keeps confidential. A proposed redacted version is attached as **Exhibit 8**.

9 7. Exhibit 51 to the Arnold Declaration is an email that contains confidential
10 information about Apple's design process. This trade secret information could be used by
11 Apple's competitors to its disadvantage. The document should remain under seal.

12 8. Exhibit 52 to the Arnold Declaration is an excerpt from the Tchao deposition. It
13 contains discussion of information from confidential consumer research surveys. A proposed
14 redacted version is attached as **Exhibit 9**.

15 9. Exhibits 55, 56, 57, 60 and 61 to the Arnold Declaration are excerpts from
16 transcripts from the Rothkopf, Lynch, Ive, Hobson and Prest depositions, respectively. They
17 contain trade secret information reflecting Apple's product design process and non-public,
18 confidential information about Apple's products, including discussion of internal meetings and
19 confidential internal presentations. This information is highly sensitive and could be used by
20 Apple's competitors to Apple's disadvantage. The documents should remain under seal in their
21 entirety.

22 10. Exhibit 58 to the Arnold Declaration is a draft marketing document. Public
23 disclosure of such commercially sensitive information is inappropriate as it would provide
24 competitors with inside information about how Apple designs its advertisements, a process that
25 Apple has invested significant time and money in and that Apple keeps confidential. It should
26 remain under seal.

27 11. Exhibit 63 to the Arnold Declaration is an excerpt of the transcript from the
28 Zadesky deposition. It contains discussions of manufacturing details. This business information

1 was created at a significant cost to Apple, and could be used by Apple's competitors to its
2 disadvantage. The document should remain under seal.

3 12. Exhibit 66 to the Arnold Declaration is the Expert Report of Peter Bressler. The
4 report contains discussion trade secret information reflecting Apple's product design process and
5 the inner workings of Apple's industrial design group. This information is highly sensitive and
6 could be used by Apple's competitors to Apple's disadvantage. A proposed redacted version is
7 attached as **Exhibit 10**.

8 13. Exhibit 67 to the Arnold Declaration is excerpts from Apple's Objections and
9 Responses to Samsung's Fourth Set of Interrogatories. It contains discussions of manufacturing
10 details and supply chain information. The entire document should be kept under seal.

11 14. Exhibit 68 to the Arnold Declaration is an internal Apple marketing study. It is an
12 internal document that reflects confidential business communications regarding competitive
13 strategy. It should remain under seal.

14 15. Exhibits 69 and 70 to the Arnold Declaration are the excerpts from the Expert
15 Report of Hal Poret and from the transcript of the Poret deposition. The parties have stipulated
16 that survey-related expert reports and deposition transcripts will be submitted under seal in full
17 and not on the public record. These documents contain confidential, proprietary research and
18 analysis. This business information was created at a significant cost to Apple, and could be used
19 by Apple's competitors to its disadvantage.

20 16. Exhibits 71 and 72a-i to the Arnold Declaration are draft advertisements. Public
21 disclosure of such commercially sensitive information is inappropriate as it would provide
22 competitors with inside information about how Apple designs its advertisements, a process in
23 which Apple has invested significant time and money and that Apple keeps confidential. These
24 exhibits should be under seal in their entirety.

25 17. Exhibit 74 to the Arnold Declaration is the Expert Report of Itay Sherman. The
26 report contains discussion trade secret information reflecting Apple's product design process and
27 the inner workings of Apple's industrial design group. This information is highly sensitive and
28

1 could be used by Apple's competitors to Apple's disadvantage. A proposed redacted version is
2 attached as **Exhibit 11**.

3 18. Exhibits 78 and 79 to the Arnold Declaration are Exhibits from the Rothkopf and
4 Lynch Depositions. They contain references to physical design models Apple possesses. They
5 should remain under seal.

6 19. Exhibits 9 and 18 to the von Herzen Declaration are excerpts from the Huppi and
7 Strickon depositions. They contain detailed references to internal engineering information that is
8 confidential to Apple. Proposed redacted versions are attached as **Exhibits 12 and 13**,
9 respectively.

10 20. Exhibits 10 and 16 to the von Herzen Declaration are the Maharbiz and von
11 Herzen expert reports. They contain detailed references to internal engineering and product
12 information that is confidential to Apple. Proposed redacted versions are attached as **Exhibits 14**
13 **and 15**, respectively.

14 21. Exhibits 9 and 11 to the Gray Declaration are excerpts from the Platzer and
15 Williamson depositions. They contain detailed references to confidential engineering and code
16 information. Proposed redacted versions are attached as **Exhibits 16 and 17**, respectively.

17 22. The portions of the confidential, unredacted versions of Samsung's Motion for
18 Summary Judgment and the Van Dam, Forlines, von Herzen, and Gray Declarations containing
19 information drawn from the exhibits above should remain under seal for the same reasons
20 articulated above.

21 23. It is Apple's policy not to disclose or describe its confidential financial
22 information, design and product development information, trade secrets, or business practices to
23 third parties. The above information is confidential to Apple. It is indicative of the way that
24 Apple manages its business affairs, designs its products, and conducts product development.
25 Apple's internal Apple code names reveal information that Apple uses to maintain confidentiality
26 with respect to its entire design and development process. If disclosed, the information in the
27 materials described above could be used by Apple's competitors to Apple's disadvantage. The
28

1 requested relief is necessary and narrowly tailored to protect the confidentiality of this
2 information.

3 24. Apple does not maintain a claim of confidentiality on Arnold Declaration Exhibits
4 1-2, 14, 16-18, 21, 27, 40-41, 46-48, 50, 53, 62, 64-65, 75-77, or 80; Van Dam Declaration
5 Exhibits 2-4; von Herzen Declaration Exhibits 19-20; or Gray Declaration Exhibits 6-8, 10, or 12-
6 15.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct to the best of my knowledge. Executed this 24th day of May, 2012,
9 in Cupertino, California.

10
11 /s/ Cyndi Wheeler
12 Cyndi Wheeler

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

