

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

10
11 Attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.

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

16 APPLE INC., a California corporation,

17 Plaintiff,

18 v.

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

22 Defendants.
23

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

**DECLARATION OF CYNDI
WHEELER IN SUPPORT OF
APPLE'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
DOCUMENTS RE APPLE'S
OPPOSITION TO SAMSUNG'S
MOTION TO EXCLUDE OPINIONS
OF CERTAIN OF APPLE EXPERTS**

24 SUBMITTED UNDER SEAL
25
26
27
28

1 I, CYNDI WHEELER, do hereby declare as follows:

2 1. I am an attorney for Apple Inc. ("Apple"). I submit this declaration in support of
3 Apple's Administrative Motion to File Documents Under Seal re Apple's Opposition to
4 Samsung's Motion to Exclude Opinions of Certain of Apple's Experts. I have personal
5 knowledge of the matters set forth below. If called as a witness I could and would testify
6 competently as follows.

7 2. Exhibits A, B, K, L, M, W, Y, Z, and AA to the Declaration of Terry L. Musika,
8 CPA in Support of Apple's Opposition to Samsung's Motion to Exclude Opinions of Certain of
9 Apple's Experts ("Musika Declaration") contain information that Apple treats as confidential in
10 the ordinary course of its business. Specifically:

11 a. Exhibit A to the Musika Declaration is the Final Damages Report of Terry
12 Musika ("Musika Final Report"). It contains highly confidential and
13 commercially sensitive business information regarding Apple financial data
14 and could be used to Apple's disadvantage by competitors if it were not
15 filed under seal. In addition, the parties have stipulated that damages-
16 related expert materials should be submitted to the Court under seal and not
17 placed on the public record.

18 b. Exhibit B to the Musika Declaration is the Supplemental Expert Report of
19 Terry Musika ("Musika Supplemental Report"). It contains highly
20 confidential and commercially sensitive business information regarding
21 Apple financial data and could be used to Apple's disadvantage by
22 competitors if it were not filed under seal. In addition, the parties have
23 stipulated that damages-related expert materials should be submitted to the
24 Court under seal and not placed on the public record.

25 c. Exhibit K to the Musika Declaration is Exhibit 20-S to the Musika
26 Supplemental Report. It contains highly confidential and commercially
27 sensitive business information regarding Apple financial data and could be
28 used to Apple's disadvantage by competitors if it were not filed under seal.

1 In addition, the parties have stipulated that damages-related expert
2 materials should be submitted to the Court under seal and not placed on the
3 public record.

4 d. Exhibit L to the Musika Declaration is Exhibit 24-S to the Musika
5 Supplemental Report. It contains highly confidential and commercially
6 sensitive business information regarding Apple financial data and could be
7 used to Apple's disadvantage by competitors if it were not filed under seal.
8 In addition, the parties have stipulated that damages-related expert
9 materials should be submitted to the Court under seal and not placed on the
10 public record.

11 e. Exhibit M to the Musika Declaration is Exhibit 25-S to the Musika
12 Supplemental Report. It contains highly confidential and commercially
13 sensitive business information regarding Apple financial data and could be
14 used to Apple's disadvantage by competitors if it were not filed under seal.
15 In addition, the parties have stipulated that damages-related expert
16 materials should be submitted to the Court under seal and not placed on the
17 public record.

18 f. Exhibit W to the Musika Declaration is an excerpt of APLNDC-
19 Y0000025024. It contains confidential, proprietary market research and
20 analysis, including information about the competitive landscape for mobile
21 devices. This business information was created at a significant cost to
22 Apple, and could be used by Apple's competitors to its disadvantage,
23 particularly because it discusses Apple's direct competitors.

24 g. Exhibit Y to the Musika Declaration is Exhibit 39-S to 41.S to the Musika
25 Supplemental Report. It contains highly confidential and commercially
26 sensitive business information regarding Apple financial data and could be
27 used to Apple's disadvantage by competitors if it were not filed under seal.

28 In addition, the parties have stipulated that damages-related expert

materials should be submitted to the Court under seal and not placed on the public record.

h. Exhibit Z to the Musika Declaration is Exhibit 46-S to the Musika Supplemental Report. It contains highly confidential and commercially sensitive business information regarding Apple financial data and could be used to Apple's disadvantage by competitors if it were not filed under seal. In addition, the parties have stipulated that damages-related expert materials should be submitted to the Court under seal and not placed on the public record.

i. Exhibit AA to the Musika Declaration is a spreadsheet prepared by Invotex Group. It contains highly confidential and commercially sensitive business information regarding Apple financial data, and could be used to Apple's disadvantage by competitors if it were not filed under seal. In addition, the parties have stipulated that damages-related expert materials should be submitted to the Court under seal and not placed on the public record.

3. Exhibit A to the Declaration of John Hauser ("Hauser Declaration") contains information that Apple treats as confidential in the ordinary course of its business. It contains highly confidential and commercially sensitive business information regarding Apple financial data and could be used to Apple's disadvantage by competitors if it were not filed under seal. In addition, the parties have stipulated that damages- and survey-related expert materials should be submitted to the Court under seal and not placed on the public record.

4. Exhibits M, N, O, P, and Q to the Declaration of Mia Mazza in Support of Apple's Opposition to Samsung's Motion to Exclude Opinions of Certain of Apple's Experts ("Mazza Declaration") contain information that Apple treats as confidential in the ordinary course of its business. Specifically:

a. Exhibit M to the Mazza Declaration is excerpts of the Expert Report of Karan Singh, Ph.D. It contains highly confidential and commercially sensitive business information regarding Apple's utility patents and could

1 be used to Apple's disadvantage by competitors if it were not filed under
2 seal.

3 b. Exhibit N to the Mazza Declaration is excerpts of the Expert Report of
4 Ravin Balakrishnan, Ph.D. It contains highly confidential and
5 commercially sensitive business information regarding Apple's utility
6 patents and could be used to Apple's disadvantage by competitors if it were
7 not filed under seal.

8 c. Exhibit O to the Mazza Declaration is excerpts of the Rebuttal Expert
9 Report of Ravin Balakrishnan, Ph.D. It contains highly confidential and
10 commercially sensitive business information regarding Apple's utility
11 patents and could be used to Apple's disadvantage by competitors if it were
12 not filed under seal.

13 d. Exhibit P to the Mazza Declaration is excerpts of the Expert Report of
14 Michel Mahabariz, Ph.D. It contains highly confidential and commercially
15 sensitive business information regarding Apple's utility patents and could
16 be used to Apple's disadvantage by competitors if it were not filed under
17 seal.

18 e. Exhibit Q to the Mazza Declaration is the Opening Expert Report of Terry
19 Musika, CPA. It contains highly confidential and commercially sensitive
20 business information regarding Apple financial data and could be used to
21 Apple's disadvantage by competitors if it were not filed under seal. In
22 addition, the parties have stipulated that damages-related expert materials
23 should be submitted to the Court under seal and not placed on the public
24 record.

25 5. It is Apple's policy not to disclose or describe its confidential financial
26 information. The information that is described above is confidential to Apple. Apple is well
27 known worldwide for its corporate culture of carefully maintaining the confidentiality of its
28

1 business information. If disclosed, the information in the materials described above could be
2 used by Apple's competitors to Apple's disadvantage.

3 6. In addition, Exhibits A and B to the Mazza Declaration, and the Musika and
4 Hauser Declarations, contain highly confidential damages- and survey-related expert materials.
5 The parties have stipulated that all damages- and survey- related expert materials will be
6 submitted to the Court under seal and not placed on the public record.

7 7. Finally, to the extent Apple's Motion and the Musika and Hauser Declarations
8 refer to or discuss the above-referenced materials, they could be used to Apple's disadvantage by
9 competitors if they were not filed under seal, for the same reasons.

10 8. The relief requested in this motion is necessary and is narrowly tailored to protect
11 confidential information, focusing only on specific exhibits and specific portions of the brief and
12 declarations at issue.

13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct to the best of my knowledge and that this Declaration was executed
15 this 31st day of May, 2012, at Cupertino, California.

16
17 By: /s/ Cyndi Wheeler
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION OF E-FILED SIGNATURE

I, MICHAEL A. JACOBS, 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 Cyndi Wheeler has concurred in this filing.

Dated: May 31, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs