

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 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 MARC J.
 PERNICK IN SUPPORT OF APPLE'S
 OPPOSITION TO SAMSUNG'S
 MOTION TO STRIKE EXPERT
 TESTIMONY BASED ON
 UNDISCLOSED FACTS AND
 THEORIES**

24 **PUBLIC REDACTED VERSION**

1 I, Marc J. Pernick, declare as follows:

2 I am a partner in the law firm of Morrison & Foerster LLP, counsel for Apple Inc.
3 (“Apple”) in this action. I am licensed to practice law in the State of California and admitted to
4 practice before this Court. I submit this declaration in support of Apple’s Opposition to
5 Samsung’s Motion to Strike Expert Testimony Based on Undisclosed Facts and Theories.

6 1. Unless otherwise indicated, I have personal knowledge of the matters stated herein
7 or understand them to be true from members of my litigation team. If called as a witness, I would
8 testify to the facts set forth below.

9 2. Attached hereto as **Exhibits 1** and **2** are a true and correct copy of Samsung’s First
10 and Second Supplemental Responses to Interrogatory No. 81.

11 3. Samsung produced the document bearing Bates No. SAMNDCA10903768-783 on
12 February 19, 2012. Attached as Exhibit C to the Declaration of Dr. Michel Maharbiz in Support
13 of Apple’s Opposition to Samsung’s Motion to Strike Expert Testimony, filed herewith
14 (“Maharbiz Declaration”) is a true and correct copy of SAMNDCA10903768-783. Apple also
15 received this document from Atmel (designated ATMEL-SAMSUNG00000286-301) on
16 February 22, 2012. Attached as Exhibit D to the Maharbiz Declaration is a true and correct copy
17 of ATMEL-SAMSUNG00000286-301.

18 4. Dr. Michel Maharbiz offered expert deposition testimony in this case on
19 April 19, 2012. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of
20 Dr. Maharbiz’s deposition testimony.

21 5. Dr. Brian Von Herzen offered expert deposition testimony in this case on
22 April 27, 2012. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts of Dr. Von
23 Herzen’s deposition testimony.

24 6. On August 3, 2011, Samsung served its First Set of Requests for Production to
25 Apple and its First Set of Interrogatories to Apple. Apple served its objections on
26 September 12, 2011. A true and correct copy of the relevant Requests for Production and Apple’s
27 objections are attached hereto as **Exhibit 5**.

28

1 7. Attached hereto as **Exhibit 6** is a true and correct copy of Samsung's Interrogatory
2 No. 16 and Apple's objections thereto.

3 8. Dr. Sanjay Sood offered expert deposition testimony in this case on
4 April 20, 2012. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts of Dr. Sood's
5 deposition testimony.

6 9. Attached hereto as **Exhibit 8** is a true and correct copy of Exhibit L to Samsung's
7 Patent L.R. 3-1 Infringement Contentions for the '711 Patent.

8 10. On March 22, 2012, Dr. Woodward Yang provided an infringement report for the
9 '711 Patent. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts of the Expert
10 Report of Dr. Woodward Yang, including certain exhibits attached thereto.

11 11. Also on March 22, 2012, Dr. Tony Givargis provided an expert report regarding
12 the invalidity of asserted claims of '711 Patent. Attached hereto as **Exhibit 10** is a true and
13 correct copy of excerpts of Dr. Givargis's report.

14 12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts of Apple's
15 L.R. 3-3 Disclosures, including certain exhibits to those disclosures.

16 13. Dr. Givargis offered deposition testimony in this case on April 23, 2012. Attached
17 hereto as **Exhibit 12** is a true and correct copy of excerpts of Dr. Givargis's deposition testimony.

18 14. Attached hereto as **Exhibit 13** is a true and correct copy of an October 26, 2012
19 letter from counsel for Samsung to counsel for Apple.

20 15. On January 10, 2012 Samsung agreed to produce product samples to Apple.
21 Attached hereto as **Exhibit 14** is a true and correct copy of a January 10, 2012 letter from counsel
22 for Samsung to counsel for Apple indicating Samsung's agreement to produce these products.
23 Attached hereto as **Exhibit 15** is a true and correct copy of one of many letters from counsel for
24 Apple to counsel for Samsung requesting access to the products. Because Samsung did not
25 provide Apple with the requested products, Apple obtained them independently.

26 16. Attached hereto as **Exhibit 16** is a true and correct copy of an April 22, 2012 letter
27 from counsel for Samsung to counsel for Apple requesting to inspect the products
28 Dr. Balakrishnan examined.

1 17. Attached hereto as **Exhibit 17** is a true and correct copy of a letter from counsel
2 for Apple to counsel for Samsung offering to make the products available for inspection. That
3 inspection took place on May 29, 2012 and is set to continue on June 1, 2012.

4 18. Attached hereto as **Exhibit 18** is a true and correct copy of Apple's Response to
5 Samsung's Preliminary Injunction Interrogatory No 6.

6 19. Apple produced updated versions of the iPhone, iPad, and iPod royalty reports on
7 March 8, 2012 with information through fiscal Q1 2012. After the March 8 deadline, Apple
8 determined that the produced royalty reports contained privileged and work product information.
9 Pursuant to paragraph 16 of the Protective Order, Apple immediately clawed back the documents
10 and substituted non-privileged versions two days later.

11 20. When Samsung objected to the format of those documents, Apple produced new
12 replacement documents. Samsung voiced additional objections to these documents, and to
13 address those concerns, Apple produced a set of the original royalty reports redacted for
14 privileged information.

15 21. Counsel for Apple fully explained the reasons for clawing back these reports in its
16 correspondence with counsel for Samsung and in its privilege log. Attached hereto as
17 **Exhibits 19, 20 and 21** are true and correct copies of correspondence from counsel for Apple to
18 counsel for Samsung explaining the need to clawback these documents. Attached hereto as
19 **Exhibit 22** is a true and correct copy of an excerpt from Apple's privilege log produced to
20 Samsung on April 11, 2012, relating to these documents.

21 22. On March 8, 2012, Apple made a production of documents bates labeled
22 APLNDC-Y0000148298 - APLNDC-Y0000231186. This production included MFI licenses.
23 Attached hereto as **Exhibit 23** is a true and correct copy of the cover email for Apple's
24 March 8, 2012 production and relevant licenses produced that day.

25 23. Prior to the March 8, 2012 close of fact discovery, Apple had produced [REDACTED]
26 [REDACTED] including all licenses covering the patents in suit. In fact, Apple produced all agreements
27 that [REDACTED] by September 29, 2011. Attached hereto as **Exhibits 24,**
28 **25, 26, 27 and 28** are relevant agreements produced as APL-ITC796-0000010041,

1 APLNDC0001221082, APLNDC00014215, APLITC796-0000010019, and APLNDC-
2 X0000007220, respectively.

3 24. Tony Blevins offered deposition testimony in this case on April 20, 2012.
4 Attached hereto as **Exhibit 29** is a true and correct copy of excerpts of Mr. Blevins's deposition
5 testimony.

6 25. Vincent O'Brien offered deposition testimony in this case on April 20, 2012.
7 Attached hereto as **Exhibit 30** is a true and correct copy of excerpts of Mr. O'Brien's deposition
8 testimony.

9 26. Michael Wagner provided a "corrected expert report" on April 20, 2012. Attached
10 hereto as **Exhibit 31** is a true and correct copy of excerpts of Mr. Wagner's report.

11 27. Mr. Wagner offered deposition testimony in this case on May 12, 2012. Attached
12 hereto as **Exhibit 32** is a true and correct copy of excerpts of Mr. Wagner's deposition testimony.

13
14 I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st
15 day of May, 2012, at Palo Alto, California.

16 /s/ Marc J. Pernick
17 Marc J. Pernick

