

ORIGINAL

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Attorneys for Plaintiff Apple Inc.

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

APPLE INC., a California corporation,
 Plaintiff,

v.

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

Defendants.

CASE NO. 12-cv-

DECLARATION OF STEVEN SINCLAIR

Hearing:

Date:

Time:

Place:

Judge:

DECLARATION OF STEVEN SINCLAIR –
 CASE NO. 12-cv-

Gibson, Dunn &
 Crutcher LLP

1 1. I, Steven Sinclair, am over eighteen (18) years of age and am competent to testify as to the
2 matters set forth herein. I have first-hand knowledge of the facts set forth herein, except where
3 statements are specifically identified as based upon information and belief. As to those statements, I
4 am so informed after reasonable investigation and believe them to be true. If called upon to testify to
5 the statements set forth herein, I could and would competently do so under oath.

6 2. I am currently an iPhone Product Marketing Manager for Complainant Apple Inc.
7 (**"Apple"**). **I have held this position since 2007.** Prior to joining Apple, I was a Product Manager at
8 Palm, Inc. I received my Bachelor of Science in Industrial Engineering and Operations Research
9 from the University of California, Berkeley.

10 3. In my position at Apple, I have been responsible for managing the marketing of the
11 iPhone product line since 2007. The first-generation iPhone was introduced in 2007, at a time when
12 **most people owned "feature phones," phones without** a sophisticated operating system. I joined
13 Apple after the launch of the original iPhone, but in **my position I have become familiar with Apple's**
14 advertising with respect to the launch of the original iPhone, and I followed the launch as well in my
15 position at Palm. Because the original iPhone was **such a revolutionary product, in Apple's initial**
16 advertisements it had to educate the public about the functionality of a smartphone in general and to
17 show consumers what a smartphone such as **the iPhone could do. For example, Apple's**
18 advertisements focused on the iPhone and showed that, by simply using the touch screen (and no
19 buttons) a user could tap the screen to select telephone numbers and make phone calls, and select a
20 link to a website. Since the initial launch, we have continued to create interesting, active television
21 commercials that focused on particular features in our iPhone, iPad, and iPod touch.

22 4. Prior to launching each new version of the iPhone, I have worked on developing the
23 message that we want to convey to the public about the product. In each instance, we have tried to
24 highlight how an iPhone is different from other smartphones on the market. We have highlighted in
25 our advertising features that are not available **on phones sold by Apple's competitors**, while placing
26 the iPhone front and center in the advertisement. **This is referred to as "product is hero" advertising.**

1 5. As noted above, since the launch of the original iPhone, many of the features of
2 **Apple's touchscreen user interface technology** have been highlighted in Apple television
3 advertisements. These advertisements typically show someone using an iPhone and demonstrating
4 various features that we have decided to emphasize in the particular ad.

5 6. For example, we have had numerous iPhone television commercials that show an
6 **iPhone being "unlocked" through the "slide to unlock" bar at the bottom of the iPhone screen.** Apple
7 was the first to launch a smartphone with this technology, so in advertisements related to the original
8 iPhone we wanted to show consumers how it worked. This is a signature feature of an iPhone, and as
9 such it has also appeared in several subsequent advertisements for later generation iPhones. The slide
10 to unlock feature of the iPhone has appeared in each of the following television advertisements (I
11 have listed the ads by title and model of iPhone and also included a link at which each ad can be
12 viewed):

13 **"All These Years" (Original iPhone)**

14 <http://www.youtube.com/watch?v=AbexaqNTppo>

15 **"How To" (Original iPhone)**

16 http://www.youtube.com/watch?v=FLxB4pHH_GY

17 **"Amazing" (Original iPhone)**

18 <http://www.youtube.com/watch?v=IPTgTeLFawM&NR>

19 **"Family Travel" (iPhone 3GS)**

20 <http://www.youtube.com/watch?v=yfeylU6ePug>

21 **"Shopper" (iPhone 3GS)**

22 <http://www.youtube.com/watch?v=kikTGEGzldY>

23 **"Retina" (iPhone 4)**

24 <http://www.youtube.com/watch?v=VHSZFrOfvTY>

25 As an indication of how closely tied the slide to unlock feature is to the iPhone, the first thing shown
26 in each of these ads is a user sliding a finger across the screen to unlock the phone.

27 7. The slide to unlock feature is also associated with other Apple iOS products. As such,
28 we have included it in commercials for the iPad:

Original iPad Commercial

http://www.youtube.com/watch?v=qiUs8HQu_1o

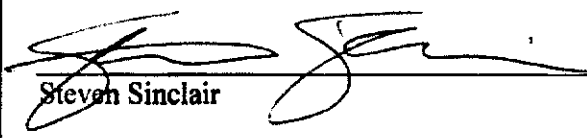
8. Finally, some of our television commercials **have featured the iPhone's ability to** recognize and use information that is provided in a consistent format, such as telephone numbers and e-mail and standard addresses. For example, in an ad for the iPhone 3GS entitled "Shopper" (<http://www.youtube.com/watch?v=kikTGEGzIdY>), a user is shown looking up a store and then a screen is shown with options to "See website" via the Safari app, "Call to confirm it's in stock" via the Phone app, and "Get directions" via the Maps app. The user is shown clicking on the "Get directions" text and is taken directly to the store's location on the Maps app.

9. Apple's new iPhone 4S introduces Siri, a computerized personal assistant that allows users to talk to, and be understood by, their iPhone. Siri responds to user voice commands and user questions. Siri also allows users to search across multiple applications—contacts, the web, email—with a single voice command. Apple has run two television ads for the iPhone 4S that highlight this exciting new feature, one entitled "Siri" (http://www.youtube.com/watch?v=5ba0tZ_P5cg) and another entitled "The Assistant" (<http://www.youtube.com/watch?v=8uS6d7fsPnM>). For example, in the currently-running television commercial for the iPhone 4S entitled "The Assistant," users are shown asking Siri a number of questions, such as "how do I tie a bow tie again?" "Do I need an umbrella in New York this weekend?" and "What does a weasel look like?" The ad also shows Siri providing names of locksmiths to a user who tells Siri that the user is locked out of her home.

10. Apple for many years has marketed and advertised its products—such as the iPhone, iPad and iPod touch—based on the unique user experience they provide. The features I have described above substantially contribute to the creation of this distinctive user experience, as reflected by Apple's decision to focus on these features in its product advertising. Apple's marketing strategy for these products is based on our belief that Apple's ability to provide this distinctive user experience is a significant factor in consumers' decisions about whether to purchase the iPhone, iPad, and iPod touch. As a result of Apple's extensive and widespread promotion of the foregoing features of the iPhone in its advertisements, we believe that consumers strongly associate the distinctive user

1 experience created by these features with Apple, helping to maintain a strong bond between Apple
2 and its customers.

3
4 I declare under penalty of perjury that the foregoing is true and correct.

5 
6 Steven Sinclair

February 6, 2012

Dated: