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CHRIS R. OTTENWELLER (STATE BAR NO. 73649)
cottenweller@orrick.com
BAS DE BLANK (STATE BAR NO. 191487)
basdeblank@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, California 94025
Telephone: +1-650-614-7400
Facsimile: +1-650-614-7401

Attorneys for Ex Parte Applicant
APPLE INC.

Filed

MAY 25 2012

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

CV 12 80124

MSJK

Case No.

In re Ex Parte Application of
APPLE INC.

Applicant,

For an Order Pursuant to 28 U.S.C. § 1782
Granting Leave to Obtain Discovery from Quinn
Emanuel for Use in Foreign Proceedings

**DECLARATION OF SANG-
WOOK HAN IN SUPPORT OF
APPLE'S EX PARTE
APPLICATION FOR AN ORDER
PURSUANT TO 28 U.S.C. § 1782
GRANTING LEAVE TO OBTAIN
DISCOVERY FROM QUINN
EMANUEL FOR USE IN
FOREIGN PROCEEDINGS**

DECLARATION OF SANG-WOOK HAN IN SUPPORT OF
APPLE'S EX PARTE APPLICATION FOR SUBPOENA

1 I, Sang-Wook Han, an attorney admitted to practice law in Korea and in the State of New
2 York, declare as follows:

3 1. I was admitted to the Korean Bar in 1988 and have practiced as a litigation
4 attorney in Korea for over 20 years. I received my LL.B. from the College of Law at Seoul
5 National University in 1984 and my LL.M. from Harvard Law School in 1997.

6 2. I am a member (partner) of the law firm of Kim & Chang, which represents Apple
7 Inc. in a lawsuit filed June 22, 2011 against Samsung Electronics Co, Ltd. and currently pending
8 before the Seoul Central District Court, 11th Panel, Case No. 2011 Gahap 63647. Apple alleges
9 Samsung phones and tablets¹ infringe four of its Korean utility patents, 950,120, 950,123,
10 950,831 and 993,459; six of its Korean design patents, 538666 (M01), 507164, 507116, 602290
11 (M10 and M12) 469568, and 507156; and that Samsung's actions constitute unfair competition
12 under the Unfair Competition Prevention and Trade Secret Prevention Act ("UCPA").

13 3. I am familiar with the facts set forth in this declaration from personal knowledge
14 and documents I have reviewed.

15 4. I submit this declaration in support of Apple's Ex Parte Application for an Order
16 Pursuant to 28 U.S.C. § 1782 Granting Leave for Discovery for Use In Foreign Proceedings. The
17 application relates to foreign proceedings in Seoul, Korea, in Germany, and in Spain.

18 **A. Relevant Aspects of Korean Law**

19 5. In Korea, my understanding of the Unfair Competition Prevention and Trade
20 Secret Protection Act ("UCPA") is that it was enacted to maintain good order in commercial trade
21 by preventing unfair methods of competition and misappropriation of trade secrets.

22 6. I understand that Article 2 of the UCPA proscribes the following types of unfair
23 competition:

- 24 (i) confusion of identity of source of goods;
25 (ii) confusion of business facilities or activities;

26
27 ¹ Galaxy S2 (3 models), Galaxy S Hoppin, Galaxy S, Galaxy K, Galaxy U, Galaxy Ace, Galaxy
Gio (2 models), Galaxy Neo, Galaxy A, Nexus S (2 models), and Galaxy Tab (4 models).

- 1 (iii) trademark dilution;
- 2 (iv) false representation of origin of goods;
- 3 (v) misleading representations of production, manufacturing, or processing;
- 4 (vi) misleading representations of source of goods or false advertising;
- 5 (vii) misuse of a foreign mark by a local agent or a representative;
- 6 (viii) cybersquatting activities; and
- 7 (ix) transferring, lending, importing, etc. of dead copy products.

8 7. The UCPA provides the following remedies for unfair competition activities: (a)
9 injunction, (b) damage compensation, (c) restoration of damaged goodwill, and (d) criminal
10 penalty (imprisonment of up to three years or thirty million Won).

11 8. Famous source identifiers protected under the UCPA include trade names,
12 trademarks, containers, shape of product or trade dress.

13 9. In order to receive protection under the UCPA, the owner of the right must establish
14 (1) the well-known status in Korea of the infringed identifier, (2) the similarity of the infringing good
15 to the owner's source identifier, and (3) the likelihood of causing confusion among consumers as to
16 the origin of the goods in question or dilution of the value or reputation of the infringed identifier.

17 10. In determining whether or not a mark is a famous source identifier in Korea, the
18 courts generally review evidence relating to distinctive features of a mark, the period of sales,
19 volume and expenditure of advertisements, status of trademark registrations, number of shops,
20 market size and market share, coherence in terms of a mark and any other evidence demonstrating
21 the exposure of the trademark to local traders and consumers as a source indicator.

22 11. The Supreme Court ruled that, in judging whether there is likelihood of confusion as
23 to the origin of the goods, the decision will result from a collective review of certain factors such as
24 the degree of the product's well-known status and distinction, the different product uses, the
25 similarities between the products, the overlap of customer bases caused by the existence or non-
26 existence of competitive and anti-competitive relationships, and the existence of the imitator's bad
27 faith (98 DO 2250, Supreme Court, April, 10, 2001).

1 12. Among the evidence considered by a court in assessing whether a claim under the
2 UCPA exists, it is of particular importance whether there is any evidence of bad faith or intentional
3 violation of the UCPA. For example, evidence that Samsung has taken inconsistent positions in
4 different litigations or intentionally copied Apple's distinctive features may be highly probative.
5 Such evidence of bad faith or intent may have impact upon the Judge's overall impression of the
6 case and may be influential with respect to liability. Such evidence of bad faith or intentional
7 violation of the UCPA may also be considered by a Korean court when determining the amount of
8 damages.

9 13. Based on my experience and expertise in practicing Korean law, I am not aware of
10 any Korean law or precedent that creates an obligation on the parties in a lawsuit to provide relevant
11 documents or evidence similar to obligations under U.S. discovery rules.

12 14. Under the Korean Civil Procedure Act, a person may refuse an order to produce
13 documents related to his or her technical or occupational secrets, which is justifiable under the
14 Korean Civil Procedure Act. (Articles 344 and 315 of the Civil Procedure Act).

15 15. Under the Korean Civil Procedure Act, the Court can limit a third party's access to
16 litigation records to protect privacy and trade secrets, but trials and sentencing are made public
17 (Article 163 of the Korean Civil Procedure Act²).

18 ² Article 163 (Restriction on Perusal, etc. for Protection of Secrets) states in part:

19 (1) In cases where there exists a vindication that it falls under any of the following
20 subparagraphs, the court may limit the persons to the parties, by its ruling upon their motion,
21 eligible to file a request for perusal or copying of the portions containing any secrets from among
22 the litigation records, or for delivery of the authentic copy, a certified copy or an abridged copy of
the portions containing any secrets from among the judicial documents or protocol (hereinafter
referred to as the "perusal, etc. of the portions containing secrets"):

23 1. When any grave secrets concerning the party's private life are entered in the
litigation records, and if the perusal, etc. of the portions containing secrets is allowed to a third
party, there exists a concern about causing a great impediment to the party's social life; and

24 2. When any trade secrets of the party (referring to the trade secrets as stipulated in
subparagraph 2 of Article 2 of the UCPA) are entered in the litigation records.

25 (2) In cases where there exists a request under Paragraph (1), no third party is allowed
26 to apply for a perusal, etc. of the portions containing secrets not later than the time when the
judgment on such request becomes final and conclusive.

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

Dated: May 25, 2012

Sang-wook Han
Sang-Wook Han