

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:10cv023580-Civ-UU-EGT

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

JURY TRIAL DEMANDED

APPLE INC.,

Counterclaim Plaintiff,

v.

MOTOROLA, INC. and
MOTOROLA MOBILITY, INC.,

Counterclaim Defendants.

**DECLARATION OF SAMUEL F. ERNST IN SUPPORT OF MOTION OF DEFENDANT
AND COUNTERCLAIM PLAINTIFF APPLE INC.'S MOTION FOR A STAY
PURSUANT TO FED. R. CIV. P. 19**

I, Samuel F. Ernst, hereby declare:

1. I am a partner at the law firm of Covington & Burling LLP, counsel of record for Apple Inc. (“Apple”) in the above-captioned matter. The matters referenced in this declaration are based on personal knowledge and, if called as a witness, I could, and would, testify competently to these matters.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Agreement and Plan of Merger (“Merger Agreement”) made public by disclosure to the United States Securities and Exchange Commission on August 18, 2011.

3. Attached hereto as Exhibit 2 is a true and correct copy of an article entitled “Supercharging Android: Google to Acquire Motorola Mobility,” dated August 15, 2011, published by “The Official Google Blog” on the internet at <http://googleblog.blogspot.com/2011/08/supercharging-android-google-to-acquire.html>.

4. Attached hereto as Exhibit 3 is a true and correct copy of the August 15, 2011 “Google Inc. M&A Call,” made available on the internet by Seeking Alpha at <http://seekingalpha.com/article/287532-google-inc-m-a-call>.

5. Attached hereto as Exhibit 4 is a true and correct copy of Defendants’ Motion to Dismiss for Lack of Standing in *Software Rights Archive, LLC v. Google Inc.*, No. CV 08-3172 (N.D. Cal. Oct. 29, 2010).

6. On August 22, 2011, counsel for Apple first requested production from Motorola (through Motorola’s counsel) of the “Disclosure Letter” referenced in the Merger Agreement.

7. On September 1, 2011, Christopher Eppich, counsel to Apple, and I conducted a telephonic meet and confer with Amanda Williamson, counsel to Motorola, in which we again requested production of the Disclosure Letter.

8. On September 2, 2011, Christopher Eppich, counsel to Apple, sent a letter to Amanda Williamson, counsel to Motorola, again requesting a copy of the Disclosure Letter.

9. On September 8, 2011, I conducted a telephonic meet and confer with Motorola regarding this motion to determine if Motorola would agree to a stay.

10. I called Motorola's attention to the provisions in the Merger Agreement restricting Google's unilateral right to take certain actions with respect to its patents without Google's consent. Counsel for Motorola did not dispute that these restrictions exist.

11. I further renewed our request for production of the Disclosure Letter cited in the Merger Agreement. Counsel for Motorola did not respond that Motorola would produce this document and did not state that this document alters the restrictions on Motorola's ability to take action with respect to the patents-in-suit.

12. Counsel for Motorola did not state whether it would agree to a stay, but requested that we send them our case law authority in support of this motion.

13. I sent counsel for Motorola case law authority supporting the motion immediately after the meet and confer and requested that they respond with an answer as to whether Motorola would oppose the motion by 12 noon on the following day, September 9, 2011.

14. After the telephonic meet and confer with Motorola on September 8, 2011, I corresponded further with counsel for Motorola and again requested that Motorola state whether it would oppose this motion.

15. To date Motorola has not produced a copy of the Disclosure Letter and has not said whether it will oppose this motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on September 9, 2011 at Berkeley, California.

/s/ Samuel F. Ernst _____
Samuel F. Ernst