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 11 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC.

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

16
 17 APPLE INC., a California corporation,
 18 Plaintiff,
 19 v.
 20 SAMSUNG ELECTRONICS CO., LTD., a
 Korean corporation; SAMSUNG
 21 ELECTRONICS AMERICA, INC., a New
 York corporation; and SAMSUNG
 22 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 23 Defendants.
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Case No. 11-cv-01846-LHK (PSG)

**DECLARATION OF MARC J.
 PERNICK IN SUPPORT OF
 APPLE'S REPORT REGARDING
 EFFORTS TO MEET AND
 CONFER ON FINAL JURY
 INSTRUCTIONS**

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

2 1. 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 Report Regarding
5 Efforts to Meet and Confer On Final Jury Instructions. Unless otherwise indicated, I have
6 personal knowledge of the matters stated herein or understand them to be true from members of
7 my litigation team. If called as a witness, I would testify to the facts set forth below.

8 2. On Sunday, August 5, my partner Alison Tucher sent counsel for Samsung
9 Apple’s revised proposed final jury instructions. A true and correct copy of Ms. Tucher’s email
10 to Samsung is attached hereto as Exhibit A.

11 3. About an hour later, Ms. Tucher sent Samsung a red-lined copy of Apple’s
12 instructions. In that email, a true and correct copy of which is attached hereto as Exhibit B,
13 Ms. Tucher asked Samsung whether it planned to propose new or different instructions from what
14 the parties had exchanged in July.

15 4. At the parties’ in-person meeting on Sunday evening, August 5th, I also asked
16 Samsung’s counsel Victoria Maroulis and Thomas Watson if they could tell us what jury
17 instructions Samsung planned to propose. Ms. Maroulis and Mr. Watson said that they would get
18 back to us.

19 5. Beginning on Monday, August 6th, I repeatedly asked Mr. Watson the same
20 question. Attached hereto as Exhibit C is a true and correct copy of my Tuesday, August 7, 2012
21 email to Ms. Maroulis and Mr. Watson in which I proposed that the parties exchange any further
22 instructions by 9:00 p.m. that night. Samsung’s counsel did not respond.

23 6. On Tuesday night at about midnight, Mr. Watson wrote to me and informed me of
24 some Apple proposals for jury instructions to which Samsung would agree. Mr. Watson’s email
25 also said that Samsung was still working on its design patent and damages instructions. I asked
26 Mr. Watson about the trade dress jury instructions as well, and Mr. Watson said Samsung was
27 working on those too. True and correct copies of my August 7, 2012 and August 8, 2012 emails
28 with Mr. Watson are attached hereto as Exhibits D and E.

1 7. Attached hereto as Exhibit F is a true and correct copy of my Thursday morning,
2 August 8, 2012 email to Mr. Watson. In that email, I again asked Samsung's counsel to inform
3 us of Samsung's proposals for its design patent, trade dress, and damages jury instructions.

4 8. Attached hereto as Exhibit G is a true and correct copy of my Thursday afternoon,
5 August 8, 2012 email to Mr. Watson. In that email, I again asked Samsung's counsel to disclose
6 Samsung's proposals for its jury instructions.

7 9. Attached hereto as Exhibits H and I are true and correct copies of emails from
8 Mr. Watson to me on Thursday night, August 8, 2012. In his emails, Mr. Watson identified 56
9 jury instructions that Samsung was proposing. This was the night before the parties' final joint
10 submission was due.

11 10. After receiving these emails, I spoke live on the phone with both Mr. Watson and
12 Ms. Maroulis. We agreed that the parties would hold a lead counsel meet-and-confer session
13 after trial on Friday for the purpose of having a further discussion about the jury instructions. We
14 agreed that, at a minimum, Harold McElhinny would attend for Apple and Charles Verhoeven
15 would attend for Samsung. Mr. Watson and I also agreed that Apple would coordinate the
16 parties' joint filing.

17 11. On Friday, August 10, after the trial day ended, I called Mr. Watson. I asked
18 where and when Samsung wanted to hold the lead trial counsel meet-and-confer session.
19 Mr. Watson declined. Mr. Watson stated that it was impractical to meet at that point, and that the
20 parties should continue their discussions over the weekend.

21 12. When I called Mr. Watson back and reminded him that the Court had directed the
22 parties to meet in person and to file their joint submission by the end of Friday, Mr. Watson
23 eventually agreed to meet. However, he informed me that Samsung's lead counsel
24 Mr. Verhoeven was not available. Mr. Watson said that he and Ms. Maroulis could meet with us
25 at 10:00 p.m. that night. I told Mr. Watson that, because Mr. Maroulis is not lead trial counsel,
26 any such meeting would not comply with the Court's order.

27 13. I sent a draft copy of the parties' joint disputed and undisputed jury instructions to
28 Samsung on Friday night, August 10, 2012.

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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 Marc J. Pernick has concurred in this filing.

Dated: August 9, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs