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1 Michael R. Heimbold (SBN 173981)
2 mheimbold@steptoe.com
3 Dylan Ruga (SBN 235969)
4 druga@steptoe.com
5 Steptoe & Johnson LLP
6 2121 Avenue of the Stars, Suite 2800
7 Los Angeles, California 90067
8 Telephone: (310) 734-3200
9 Facsimile: (310) 734-3229

10 Attorneys for Applicant
11 SAMSUNG ELECTRONICS CO., LTD.

Filed

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

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

LHK

14 *In re* Ex Parte Application of

Case No.

15 SAMSUNG ELECTRONICS CO.,
16 LTD.

CV 12 80275 MISC.

17 Applicant,

18 For an Order Pursuant to
19 28 U.S.C. § 1782 Granting
20 Leave to Obtain Discovery
21 from Apple Inc. for Use in
22 Foreign Proceedings.

23 **DECLARATION OF HIDEAKI
24 KOBAYASHI IN SUPPORT OF
25 SAMSUNG ELECTRONICS CO.,
26 LTD.'S EX PARTE APPLICATION
27 FOR AN ORDER PURSUANT TO
28 28 U.S.C. § 1782 GRANTING
LEAVE TO OBTAIN DISCOVERY
FOR USE IN FOREIGN
PROCEEDINGS**

HRL

DECLARATION OF HIDEAKI KOBAYASHI IN SUPPORT OF SAMSUNG'S EX PARTE APPLICATION FOR
AN ORDER PURSUANT TO 28 U.S.C. § 1782

FAXED

1 I, Hideaki Kobayashi, declare as follows:

2 1. I am an attorney at OHNO & PARTNERS, counsel of record for
3 applicant Samsung Electronics Co., Ltd. and its affiliated companies (collectively,
4 "Samsung") in their litigation against Apple in Japan. I have personal knowledge
5 of the facts set forth in this declaration, and if called upon, I could and would
6 competently testify as follows.

7 2. Samsung is involved in litigation with Apple Inc. ("Apple") in several
8 countries around the world (the "Apple/Samsung Litigation"). One primary issue
9 in the Apple/Samsung Litigation is whether Samsung's products infringe patents
10 held by Apple and, if so, whether Samsung has any valid defenses to infringement.

11 3. I am informed and believe that the Apple/Samsung Litigation currently
12 is pending in the following foreign jurisdictions:

- 13 • Case Nos. 2011 (Yo) 22049 and 2011 (Wa) 27781 pending in the
14 Tokyo District Court, Tokyo, Japan, and 2012 (Ra) 10012 and
15 2012 (Ne) 10084 pending in the IP High Court, Tokyo, Japan (the
16 "Japanese Actions");
- 17 • Appeals against decisions in case nos. 400367 / HA ZA 2011-
18 2212, 400376 / HA ZA 2011-2213 and 400385 HA ZA 2011-
19 2215, pending in the Court of Appeals of The Hague (the "Dutch
20 Actions");
- 21 • Case No. 2012 Na 76203, pending in the Seoul High Court, Seoul,
22 South Korea ("the Korean Actions");
- 23 • Case No. HC11 CO 03079, pending in the High Court of Justice,
24 Chancery Division, Patents Court, London, United Kingdom (the
25 "British Action"); and
- 26 • Case No. (P) NSD 1243 of 2011, pending in the Federal Court of
27 Australia, New South Wales, General Division (the "Australian
28 Action").

1 4. Attached hereto as **Exhibit 1** is a true and correct excerpt from
2 Apple Inc.'s most recent 10K, which I accessed from the following website:
3 <http://investor.apple.com/> (last visited November 26, 2012).

4 5. Apple Inc. is a party in the Apple/Samsung Litigation pending in
5 Japan.

6 6. Samsung is unable to procure discovery from Apple Inc. for any Apple
7 iPhone in the Apple/Samsung Litigation pending in Japan because the Japanese
8 Code of Civil Procedure does not have clause to order a party outside of Japan to
9 present a document or an object for inspection and, to the best of my knowledge,
10 there is no precedent in which the Court ordered such presentation to a party
11 outside of Japan.

12 7. Through the instant application, Samsung seeks the following
13 materials to be produced for use in the Japanese Actions:

- 14 ▪ All documents that evidence, reflect or refer to the sale, transfer,
15 lease, or offer for sale of any iPhone to any person or entity prior to
16 June 29, 2007;
- 17 ▪ Physical exemplars of any iPhone that was made available for sale,
18 transfer, lease, or offer for sale to any person or entity prior to June
19 29, 2007;
- 20 ▪ A physical exemplar of the iPhone that was used in the presentation
21 by Steve Jobs at MacWorld 2007 on January 9, 2007; and
- 22 ▪ A physical exemplar of the iPhone that was used in the video "iPhone
23 guided tour" posted to Apple's website on or about June 22, 2007.

24 8. The requested materials to be produced are highly relevant and
25 necessary for Samsung's invalidity defenses in the Japanese Actions because it is
26 highly possible that the operation of the requested iPhones is the same as the
27 invention of the claims described in the patent-in-suit in the Apple/Samsung
28 Litigation pending in Japan, and thus these claims can be invalidated based on the

1 requested materials on the ground of novelty and/or obviousness (Japanese Patent
2 Law, Article 29, Section 1, 2).

3 9. A draft of Samsung's proposed subpoena to Apple Inc. is attached
4 hereto as **Exhibit 2**.

5
6 I declare under penalty of perjury under the laws of the United States and the
7 State of California that the foregoing is true and correct.

8 Executed on November 29, 2012 in Tokyo, Japan.

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11 Hideaki Kobayashi

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended September 24, 2011

Or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____
Commission file number: 000-10030

APPLE INC.

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction of incorporation or organization)

94-2404110
(I.R.S. Employer Identification No.)

1 Infinite Loop
Cupertino, California
(Address of principal executive offices)

95014
(Zip Code)

Registrant's telephone number, including area code: (408) 996-1010

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, no par value
(Title of class)

The NASDAQ Global Select Market
(Name of exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer (Do not check if smaller reporting company)

Accelerated filer
Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes No

The aggregate market value of the voting and non-voting stock held by non-affiliates of the registrant, as of March 25, 2011, the last business day of the Company's most recently completed second fiscal quarter, was approximately \$322,921,000,000 based upon the closing price reported for such date on the NASDAQ Global Select Market. For purposes of this disclosure, shares of common stock held by persons who hold more than 5% of the outstanding shares of common stock and shares held by executive officers and directors of the registrant have been excluded because such persons may be deemed to be affiliates. This determination of executive officer or affiliate status is not necessarily a conclusive determination for other purposes.

929,409,000 shares of Common Stock Issued and Outstanding as of October 14, 2011

DOCUMENTS INCORPORATED BY REFERENCE

(1) Portions of the registrant's definitive Proxy Statement relating to its 2012 Annual Meeting of Shareholders are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. Such Proxy Statement will be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF CALIFORNIA

In re Application of Samsung Electronics Co., Ltd.

Case No. _____
(Subpoena pursuant to 28 U.S.C. § 1782)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:
Apple Inc., 1 Infinite Loop, Cupertino, California 95014

[X] Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:
See Attachment "A"

Place: Steptoe & Johnson LLP, 2121 Avenue of the Stars # 2800, Los Angeles, CA 90067
Date and Time: _____, 2013 at 9:00 a.m.

[] Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: _____, 2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk
Attorney's signature
Dylan Ruga, Esq.

The name, address, e-mail, and telephone number of the attorney representing (name of party) Samsung Electronics Co., Ltd., who issues or requests this subpoena, are: Dylan Ruga, Esq., Steptoe & Johnson LLP, 2121 Avenue of the Stars # 2800, Los Angeles, California 90067; (310) 734-3228; druga@steptoe.com

ATTACHMENT "A"

DEFINITIONS AND INSTRUCTIONS

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3 1. "APPLE," "YOU," or "YOUR" means Apple Inc. and each predecessor,
4 successor, division, subsidiary, parent or related company thereof, whether or not
5 organized under the laws of the United States.

6 2. The terms "DOCUMENT" or "DOCUMENTS" mean any recorded
7 communication, representation or writing as defined by the Federal Rules of
8 Evidence and the Federal Rules of Civil Procedure. It specifically includes, but is
9 not limited to, any and all memoranda, letters, notes, telegrams, publications,
10 contracts, records, papers, books, recordings on tape, magnetic discs, wire or
11 drums, checks, computer files, **electronic mail**, drafts, money orders, worksheets,
12 working papers, notebooks, diaries, calendars, graphs, charts, screenplays,
13 treatments, business records of all kinds, and similar writings, whether or not in
14 YOUR possession or under YOUR control, no matter how prepared, or by whom,
15 which relate to or pertain in any manner to the subject matter of the request, and all
16 drafts or copies (including non-identical copies) prepared in connection with such
17 DOCUMENTS, whether used or not.

DOCUMENTS TO BE PRODUCED

18 1. All DOCUMENTS that evidence, reflect or refer to the sale, transfer, lease,
19 or offer for sale of any iPhone by YOU to any person or entity prior to June 29,
20 2007.

21 2. Physical exemplars of any iPhone that YOU made available for sale, transfer,
22 lease, or offer for sale to any person or entity prior to June 29, 2007.

23 3. A physical exemplar of the iPhone that was used in the presentation by Steve
24 Jobs at MacWorld 2007 on January 9, 2007.

25 4. A physical exemplar of the iPhone that was used in the video "iPhone guided
26 tour" posted on YOUR website on or about June 22, 2007.
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