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CO., LTD., SAMSUNG ELECTRONICS

14 AMERICA, INC. and SAMSUNG

TELECOMMUNICATIONS AMERICA, LLC

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

CASE NO. 11-cv-01846-LHK

19 Plaintiff,

20 vs.

**DECLARATION OF ALEX BINDER IN
SUPPORT OF SAMSUNG'S MOTION
FOR ADVERSE INFERENCE JURY
INSTRUCTION**

21 SAMSUNG ELECTRONICS CO., LTD., a

Korean business entity; SAMSUNG

22 ELECTRONICS AMERICA, INC., a New

York corporation; SAMSUNG

23 TELECOMMUNICATIONS AMERICA,

LLC, a Delaware limited liability company,

24 Defendants.

1 I, Alex Binder, declare:

2 1. I make this declaration in Support of Samsung Electronics Co., Ltd., Samsung
3 Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively
4 “Samsung’s”) Motion for Adverse Inference Jury Instruction.

5 2. I am an attorney in the law firm of Quinn Emanuel Urquhart & Sullivan, LLP,
6 counsel for Samsung. I have personal knowledge of the facts set forth in this declaration and, if
7 called upon as a witness, I could and would testify to such facts under oath.

8 3. Under my supervision, contract attorneys for Quinn Emanuel and document
9 production vendors engaged by Quinn Emanuel assisted in gathering the information provided in
10 Paragraphs 5-15 of this Declaration.

11 4. The numbers provided in Paragraphs 5-15 of this Declaration regarding Samsung's
12 productions include documents served by the parties in this action, as well as in the following
13 actions: *In the Matter of Certain Electronic Devices, Including Wireless Communication Devices,*
14 *Portable Music and Data Processing Devices, and Tablet Computers*, USITC Inv. No. 337-TA-
15 794 and *Apple Inc. v. Samsung Electronics Co., LTD., et al.*, and *In the Matter of Certain*
16 *Electronic Digital Media Devices and Components Thereof*, USITC Inv. No. 337-TA-796.

17 5. Attached hereto as **Exhibit 1** is a true and correct copy of Apple Inc.'s
18 Supplemental Identification of Custodians, Search Terms, and Document Retention Notices
19 ("Apple's Defensive Transparency Disclosures"), and Exhibit FF thereto. Pursuant to the Court's
20 Order Granting-in-Part Apple's Motion for an Adverse Inference Jury Instruction ("Order") (Dkt.
21 No. 895) at page 2, footnote 4, this exhibit previously submitted under seal was unsealed on
22 7/25/12.

23 6. Attached hereto as **Exhibit 2** is a true and correct copy of Apple Inc. Amended
24 Document Retention Notice Distribution. ("Apple's Offensive Transparency Disclosures").
25 Pursuant to the Court's Order at page 2, footnote 4, this exhibit previously submitted under seal
26 was unsealed on 7/25/12.

7. Apple issued litigation hold notices no earlier than April 29, 2011. Apple issued or sent a total of 957 litigation hold notices. Apple issued or sent 264 litigation hold notices, or roughly 28% of the total Apple litigation hold notices, on or after January 1, 2012.

8. Four Apple design-related witnesses (Chris Harris, Chris Hood, Mark Lee, and Chris Prest) do not appear in Apple's Defensive Transparency Disclosures as having been sent defensive litigation hold notices. They appear in Apple's Offensive Transparency Disclosures as having been issued offensive litigation hold notices on January 11, 2012.

9. Brian Huppi does not appear in Apple's Defensive Transparency Disclosures, and appears in Apple's Offensive Transparency Disclosures as having been issued an offensive litigation hold notice on February 23, 2012.

10. Steve Jobs does not appear in either Apple's Defensive Transparency Disclosures or Apple's Offensive Transparency Disclosures as having been issued or sent an offensive or defensive litigation hold notice.

11. Attached hereto as **Exhibit 3** is a true and correct copy of Apple Inc.'s First Amended and Supplemental Initial Disclosures Pursuant to Rule 26(a)(1) ("Apple's Initial Disclosures"). Pursuant to the Court's Order at page 2, footnote 4, this exhibit previously submitted under seal was unsealed on 7/25/12.

12. The following chart summarizes the dates certain offensive or defensive litigation hold notices were issued or sent to certain individuals named in Apple's Initial Disclosures.

Witness	Potential area(s) of knowledge (at least)	Offensive Litigation Hold Notice Issued	Defensive Litigation Hold Notice Sent
Suzanne Lindbergh	Appearance of Apple products in popular media	1/11/12	none
John Brown	The mobile phone, tablet and media player markets	9/27/11	none
Phil Schiller	Apple's iPhone and iPad business	9/27/11	none
Tony Blevins	Supply chain for baseband chips	none	2/8/12

	incorporated into accused Apple products; identity of baseband chips incorporated into accused Apple products		
Saku Hieta	Supply chain for baseband chips incorporated into accused Apple products; identity of baseband chips incorporated into accused Apple products	None	1/30/12
Justin Santamaria	Design and operation of accused functionality in accused Apple products	9/27/11	8/31/11, 1/30/12

13. The following chart summarizes the number of emails Apple produced from the custodial files of certain Apple employees relevant to this litigation:

Custodian	Relevance	No. of Emails in Custodial Production	No. of Documents in Custodial Production
Bartley Andre	named inventor of D270, D899, D087, and D677 patents	14	135
BJ Watrous	head patent counsel	0	11
Brian Huppi	named inventor of '607	0	104
Chris Harris	model builder	0	0
Chris Stringer	named inventor of D677, D270, and D889 patents	15	38
Curt Rothert	software engineer	30	30
Duncan Kerr	named inventor of D087, D677, D270, and patents D899	41	130
Eugene Whang	named inventor of D087, D677, D270, and D899	36	146

Custodian	Relevance	No. of Emails in Custodial Production	No. of Documents in Custodial Production
	patents		
Evans Hankey	designer	0	21
Jonathan Ive	named inventor of D087, D677, D270, and D899 patents	45	173
Mark Buckley	finance analyst	0	100
Mark Lee	manager, model shop	8	10
Matthew Rohrbach	named inventor of D087, D677, D270, and D889 patents	32	385
Peter Russell-Clarke	named inventor of D270 patent	56	190
Quinn Hoellwarth	Apple in-house attorney, prosecutor of '949, and '757 patents	0	0
Rico Zorkendorfer	named inventor of D087, D677, D270, and D889 patents	15	62
Shin Nishibori	named inventor of D889, D087, D677, D270, and D899 patents.	18	94
Stephen Lemay	named inventor of '163 patent	43	59
Steve Jobs	named inventor of '949, '678, D087, D677, D270, D889, D757, and D678 patents; former CEO	51	54
Wei Chen	technical director	12	37

14. The following chart summarizes the number of custodial emails produced for certain Apple custodians dated after August 1, 2010 and before April 1, 2011. Of the 66 emails listed below dated between August 1, 2010 and April 1, 2011, more than 20 are various permutations of email chains, containing significant duplication.

Name	Emails dated 8/1/10-3/31/11	Non-Email Documents dated 8/1/2010-3/31/2011
Bartley Andre	1	1
Brian Huppi	0	0
Chris Harris	0	0
Chris Stringer	4	2
Curt Rothert	3	0
Duncan Kerr	7	12
Eugene Whang	7	6
Evans Hankey	0	0
Jon Ive	5	9
Mark Bucklev	0	0
Mark Lee	3	0
Matthew Rohrbach	16	25
Peter Russell Clarke	2	1
Quinn Hoellwarth	0	0
Rico Zorkendorfer	3	3
Shin Nishibori	0	0
Stephen Lemay	0	0
Steve Jobs	3	0
Wei Chen	12	7

15. The following chart summarizes the number of non-custodial emails produced for certain Apple custodians, compared to the number of custodial emails produced for each:

Witness	Relevance	Non-Custodial Emails	Custodial Emails
Chris Stringer	named inventor of D677, D270, and D889 patents	475	15
Douglas Satzger	Former industrial design creative lead and design manager	133	0
Eugene Whang	named inventor of D087, D677, D270, and D899 patents	144	36
Jonathan Ive	named inventor of D087, D677, D270, and D899 patents	759	45
Matthew Rohrbach	named inventor of D087, D677, D270, and D889 patents	112	31
Scott Forstall	Named inventor of '163 patent	1,676	172
Shin Nishibori	named inventor of D889, D087, D677, D270, and D899	43	18

	patents		
Stephen Lemay	named inventor of '163 patent	2,028	40
Steve Jobs	named inventor of '949, '678, D087, D677, D270, D889, D757, and D678 patents; former CEO	2,042	51

16. Pursuant to the Court's Order at page 2, footnote 4, portions of this declaration previously submitted under seal were unsealed on 7/25/12.

I declare under penalty of perjury that the foregoing is true and correct. Executed in San Francisco, California on July 26, 2012.

By /s/ Alex Binder
Alex Binder

GENERAL ORDER ATTESTATION

I, Victoria F. Maroulis, am the ECF user whose ID and password are being used to file the foregoing **DECLARATION OF ALEX BINDER IN SUPPORT OF SAMSUNG'S INC.'S MOTION FOR ADVERSE INFERENCE JURY INSTRUCTION.** In compliance with General Order 45, X.B., I hereby attest that Alex Binder has concurred in this filing.

DATE: July 26, 2012

/s/ Victoria Maroulis