

1 HAROLD J. MCELHINNY (CA SBN 66781)
hmcclhinny@mofo.com
2 MICHAEL A. JACOBS (CA SBN 111664)
mjacobs@mofo.com
3 RACHEL KREVANS (CA SBN 116421)
rkrevans@mofo.com
4 ERIK J. OLSON (CA SBN 175815)
ejolson@mofo.com
5 MORRISON & FOERSTER LLP
425 Market Street
6 San Francisco, California 94105-2482
Telephone: (415) 268-7000
7 Facsimile: (415) 268-7522

8
9 Attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.

WILLIAM F. LEE
william.lee@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
mark.selwyn@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
950 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 858-6000
Facsimile: (650) 858-6100

10
11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15
16 APPLE INC., a California corporation,

17 Plaintiff,

18 v.

19 SAMSUNG ELECTRONICS CO., LTD., a
Korean corporation; SAMSUNG ELECTRONICS
20 AMERICA, INC., a New York corporation; and
SAMSUNG TELECOMMUNICATIONS
21 AMERICA, LLC, a Delaware limited liability
company,

22 Defendants.
23
24
25
26
27
28

Case No. 11-cv-01846-LHK (PSG)

**DECLARATION OF MARYLEE
ROBINSON, CPA, IN SUPPORT OF
APPLE'S OPPOSITION TO
SAMSUNG'S ADMINISTRATIVE
MOTION FOR RELIEF FROM APRIL
29, 2013 CASE MANAGEMENT
ORDER**

Place: Courtroom 8, 4th Floor
Judge: Hon. Lucy H. Koh

1 I, Marylee Robinson, CPA, declare as follows:

2 1. I am a Director with Invotex Group (“Invotex”), located at 1637 Thames Street,
3 Baltimore, Maryland 21231. I have played a substantial role in Apple’s intellectual property
4 dispute with Samsung since September 2011, working closely with Terry Musika in the
5 preparation of his prior declarations, expert reports, and trial testimony in this case. I also worked
6 closely with Julie L. Davis, CPA, and her staff in connection with the preparation of her expert
7 report served on June 24, 2013.

8 2. At Ms. Davis’s direction, Invotex used the same damages model and
9 methodologies to prepare the calculations in Ms. Davis’s expert report that were previously
10 described by Mr. Musika in connection with his expert reports, including use of the same models
11 and software tools (*e.g.*, certain Access databases and Excel spreadsheets) that were previously
12 prepared by Invotex in connection with those reports. In her June 24 Expert Report, Ms. Davis
13 described in much greater detail the use of these models, methods, and inputs. Ms. Davis’s report
14 identified specifically the changes that she made to the inputs to Mr. Musika’s calculations in her
15 report, and she reflected how each arose from the jury’s August 24, 2012 Amended Verdict, the
16 March 1 Order, or the April 29, 2013 Case Management Order.

17 3. Mr. Musika previously calculated Samsung’s profits on a revenue basis. Those
18 calculations were presented in paragraphs 85 and 86 and Exhibits 17 and 18 of Mr. Musika’s
19 original expert report dated March 22, 2012, and in Exhibits 17-S and 18-S to his supplemental
20 expert report dated May 8, 2012. I attach these paragraphs and exhibits as **Exhibit A** to this
21 declaration.

22 4. Mr. Musika previously calculated Samsung’s total profits on an incremental profits
23 basis in paragraphs 39 to 40 of his supplemental report. That calculation was presented in Exhibit
24 50-S to his supplemental expert report, which was later introduced at trial as Plaintiff’s Exhibit
25 28. I attach these paragraphs, Exhibit 50-S and PX28 as **Exhibit B** to this declaration.

26 5. Mr. Musika previously calculated Apple’s lost profits based in part on the number
27 of months that it would take Samsung to design, test, manufacture, and distribute an alternative
28 smartphone or tablet product that did not embody the accused element of Apple’s protected

1 intellectual property, as discussed in paragraph 129 of his original report. Mr. Musika explicitly
2 stated in his report that the design-around period should start on the date on which Samsung had
3 actual notice of Apple's intellectual property, even though Mr. Musika's calculations initially
4 assumed that Apple would prevail on its position regarding when Samsung had such notice:

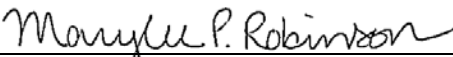
5 Accordingly, Apple's lost sales are based on the amount of lost
6 sales only during the number of months Samsung is removed from
7 the market. Exhibit 20 identifies the number of months to design,
8 test, manufacture and distribute an alternative smartphone and
9 tablet that does not embody the accused element of each item of
10 Apple Intellectual Property In Suit. This period begins at the later
11 of the issuance of the item of Apple Intellectual Property In Suit or
12 the date in which Samsung first sold the product embodying the
13 Apple Intellectual Property In Suit *and assumes that Samsung had
14 notice of the patents on that date.* I understand that Samsung
15 contends that it lacked actual or constructive notice of its
16 infringement for at least some of the patents until suit was filed. *To
17 the extent that Samsung succeeds with respect to this claim, the
18 calculations done to determine the amount of time that Samsung
19 would be unable to sell products should begin at the date in which
20 notice is proven.*

21 Mr. Musika reflected the same view in paragraph 89 of the original report, discussing changes "if
22 Samsung was on notice of the intellectual property and began an effort to design around the
23 patents at a different date." At Ms. Davis's direction, and consistent with the Court's March 1
24 Order, Invotex prepared a calculation of Apple's lost profits for purposes of the new trial in which
25 the design-around periods start on the notice dates specified for each patent in the Court's March
26 1 Order. This calculation follows Mr. Musika's original methodology. I attach paragraphs 89
27 and 129 (and additional paragraphs surrounding them for context) from Mr. Muska's original
28 report as **Exhibit C** to this declaration.

6. In preparing Mr. Musika's original and supplemental expert reports, Invotex had
access to and was aware of Apple's Rule 37(b)(2) Motion Regarding Samsung's Violations of the
January 27, 2012 Damages Discovery Order filed on February 28, 2012, including the declaration
of Eric R. Roberts in support of that motion. I personally reviewed the declaration of Mr. Roberts
and discussed it with Mr. Musika. The deficiencies identified by Mr. Roberts in his declaration,
which are discussed by Ms. Davis in paragraph 147 of her expert report, were also previously
discussed in paragraph 143 of Mr. Musika's original report and paragraphs 29 and 30 of Mr.

1 Musika’s supplemental expert report. Apple’s motion was referred to in footnote 129 to
2 paragraph 143 of Mr. Musika’s original report, and in paragraph 31 of Mr. Musika’s
3 supplemental expert report. I attach these paragraphs as **Exhibit D** to this declaration.

4
5 I declare under penalty of perjury that the foregoing is true and correct and that this
6 declaration was executed this 3rd day of July 2013 in Baltimore, Maryland.

7
8 
9 _____
10 MARYLEE P. ROBINSON

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28