

EXHIBIT R

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10 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC

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

16 APPLE INC., a California corporation,

17 Plaintiff,

18 v.

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

22 Defendants.
 23

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

**DECLARATION OF TERRY L.
 MUSIKA, CPA IN SUPPORT OF
 APPLE'S OPPOSITION TO
 SAMSUNG'S MOTION TO STRIKE
 EXPERT TESTIMONY BASED ON
 UNDISCLOSED FACTS AND
 THEORIES**

24
 25 SUBMITTED UNDER SEAL
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1 I, Terry L. Musika, do hereby declare as follows:

2 1. My name is Terry L. Musika. I am currently a Managing Director of Invotex
3 Group. My business address is 1637 Thames Street, Baltimore, Maryland 21231.

4 2. In this matter, I have previously submitted a Reply Declaration In Support of
5 Apple's Motion for a Preliminary Injunction, dated September 30, 2011. I also submitted an
6 Expert Witness Report on March 22, 2012 ("Original Expert Report"), a Rebuttal Expert Report
7 on April 16, 2012 ("Rebuttal Expert Report") in which I commented on the Expert Report of
8 Vincent E. O'Brien dated March 22, 2012 that Samsung submitted to support its damages claim
9 for alleged infringement of its "feature patents," and a Supplemental Expert Report on May 8,
10 2012 ("Supplemental Expert Report"). A true and correct copy of my Rebuttal Expert Report is
11 attached to this declaration as **Exhibit A**. These expert reports accurately reflect the testimony
12 that I would be prepared to give under oath, the opinions that I have reached in this matter, and
13 the basis for those opinions.

14 3. I am a CPA with over 37 years of business experience. I am a former audit and
15 consulting partner for the international accounting firm of Coopers & Lybrand, former Managing
16 Director for Navigant Consulting, Inc. and have previously formed, owned and operated a
17 proprietary database company, a national financial and economic consulting firm, and a merger
18 and acquisition company. Additionally, I have frequently served the Federal Court system as a
19 Court Appointed Chapter 11 Operating Trustee, Liquidating Chapter 7 Trustee, Operating
20 Chapter 7 Trustee, Examiner, and Paying Agent.

21 4. My work has mainly been focused on accounting, auditing, economic damages
22 analysis and the operation of businesses. During the past 37 years I have provided expert
23 testimony in over 200 separate proceedings before 47 different Federal District Courts throughout
24 the U.S., nine separate state courts, numerous proceedings before the U.S. Court of Federal
25 Claims, four separate U.S. Bankruptcy Courts, numerous arbitration matters and the United States
26 International Trade Commission. I was accepted as a designated expert in all cases. The scope
27 and nature of my testimony has included a wide range of financial topics with a particular focus
28

1 on the investigation, analysis and explanation of complex financial transactions in various
2 industries.

3 5. A complete list of my qualifications and prior testifying experience are contained
4 in Exhibits 1-2 to my Rebuttal Expert Report.

5 6. I provide this declaration to respond to Samsung's Motion to Strike Expert
6 Testimony Based on Undisclosed Facts and Theories. The information that I provide here has
7 already been disclosed in connection with my expert reports and my deposition in this matter.

8 7. For purposes of my analysis of Apple's reasonable royalties, I did not rely and am
9 not relying on any licenses or any royalty or licensing information that was produced after the end
10 of discovery. Both Samsung's damages expert (concerning Apple's damages) and I agree with
11 the testimony of Apple and Samsung witnesses that neither party had any comparable licenses
12 that provide guidance on the amount of a reasonable royalty in this case. My Original Expert
13 Report at paragraphs 168 to 181 reflects my analysis. I understand that the licenses and material
14 discussed in this section were produced prior to the end of discovery. I have attached the relevant
15 sections of my Original Expert Report as **Exhibit B** to this declaration.

16 8. My analysis of Apple's manufacturing capacity for purposes of my damages
17 opinions only used documents that were produced before the end of discovery, specifically before
18 Mr. Buckley's February 23rd deposition, which I attended. No part of my work or analysis arises
19 from any documents produced after the end of discovery (or even after Mr. Buckley's
20 deposition). My Original Expert Report at paragraphs 126 to 127 and in Exhibit 17.2, Exhibit 26,
21 and Exhibit 27 reflects my analysis, which are contained in Exhibit B hereto.

22 9. I do not rely on Apple's royalty reports for the opinions in my Original Expert
23 Report, Rebuttal Expert Report, or Supplemental Expert Report. This includes the following
24 documents that I understand Samsung is seeking to preclude from use: APLNDC0001772330-R –
25 APLNDC0001772340-R; APLNDC0000051350-R – APLNDC0000051356-R; APLNDC-
26 Y0000236371-R – APLNDC-Y0000236405-R; APLNDC-Y0000232449 – APLNDC232454.

27 10. I have reviewed the list in paragraph 11 below of twenty-two license agreements
28 that I understand were produced after the end of discovery. Only four of the twenty-two licenses

1 make an appearance in my expert reports.¹ These four licenses appear in paragraph 44 of my
2 Rebuttal Expert Report, but my opinions and comments concerning Dr. O'Brien's report do not
3 rely on them. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 and my opinions remain the same if these agreements are not considered. The June 3, 2003
7 license agreement between Apple and Nokia and VoiceAge also appears on my "Documents
8 Considered List" in Exhibit 3 to my Original Expert Report,² but I did not rely on it for any of the
9 opinions in my Original Expert Report and my opinions concerning the appropriate reasonable
10 royalty in this case would remain unchanged if the document were precluded.

11 11. At the request of counsel in connection with this motion I have now reviewed the
12 remaining eighteen licenses produced after the end of discovery and not referenced in my expert
13 reports. Based on that review, I do not consider any of these licenses to be comparable in
14 circumstances to the hypothetical negotiations between Apple and Samsung in this case. None of
15 these licenses concerns the patents-in-suit. [REDACTED]

16 [REDACTED]
17 [REDACTED]
18
19 _____
20 ¹ These licenses are: (1) a June 3, 2003 license agreement between Apple and Nokia and
21 VoiceAge (AppDel0158906 - AppDel0158943), which I understand was produced on May 9,
22 2012 as APLNDC-WH0000726437 - APLNDC-WH0000726474; (2) a July 1, 2005 agreement
23 between Apple and Audio MPEG, Inc. and Societa Italiana Per Lo Sviluppo Dell'Elletronica,
24 S.I.SV.EL, S.P.A. (APLNDCWH0000725229 - APLNDCWH0000725257); (3) a January 1, 2006
25 agreement between Apple and Audio MPEG, Inc. and Societa Italiana Per Lo Sviluppo
26 Dell'Elletronica, S.I.SV.EL, S.P.A. (APLNDCWH0000725258 - APLNDCWH0000725288); and
27 (4) an October 6, 2003 agreement between Apple and Via Licensing Corp.
28 (APLNDCWH0000725289 - APLNDCWH0000725319). All but the June 3, 2003 license
agreement between Apple and Nokia and VoiceAge was produced before my deposition in this
matter, but I was not asked any questions about them during my deposition.

² For clarity, the June 2003 Apple-Nokia-VoiceAge license agreement is not the same as
the June 2011 Apple-Nokia Cross License discussed in paragraphs 172 to 173 of my Original
Expert Report, with Bates number APLNDC-X0000007220 - APLNDC-X0000007335, which I
understand was produced on January 5, 2012.

Bates Number	Licensor	Title	Date
APLNDC-WH0000726437 - APLNDC-WH0000726474	Nokia Corp. and VoiceAge Corp.	Patent License – Narrowband AMR and Wideband AMR Standards	6/3/2003
APLNDCWH0000725229 - APLNDCWH0000725257	Audio MPEG, Inc. and Societa Italiana Per Lo Sviluppo Dell'Elletronica, S.I.SV.EL, S.P.A.	License Agreement	7/1/2005
APLNDCWH0000725258 - APLNDCWH0000725288	Audio MPEG, Inc. and Societa Italiana Per Lo Sviluppo Dell'Elletronica, S.I.SV.EL, S.P.A.	License Agreement	1/1/2006
APLNDCWH0000725289 - APLNDCWH0000725319	Via Licensing Corp.	MPEG-4 Audio Patent License Agreement	10/6/2003
APLNDC-WH0000723595 - APLNDC-WH0000723611	Atmel Corp.	Settlement and License Agreement	8/26/9/2008
APLNDC-WH0000726506 - APLNDC-WH0000726522	Digcom, Inc. and Dr. Kamilo Feher	Settlement and License Agreement	4/15/2010
APLNDC-WH0000726523 - APLNDC-WH0000726533	Jenny Hill, LLC	Patent License Agreement	5/2/2011
APLNDC-WH0000726492 - APLNDC-WH0000726505	Pleasant View, LLC	Patent License Agreement	1/17/2011
APLNDC-WH0000726534 - APLNDC-WH0000726541	Premier International Associates, LLC	Settlement and License Agreement	8/14/2007
APLNDC-WH0000726542 - APLNDC-WH0000726555	Round Rock Research, LLC	License Agreement	10/22/2010
APLNDC-WH-A0000031569 - APLNDC-WH- A0000031616	Rovi Corp.	Patent License Agreement	9/17/2010
APLNDC-WH0000725320 - APLNDC-WH0000725352	Thomson Consumer Electronics	Patent License Agreement	1/1/2002
APLNDC-WH0000726556 - APLNDC-WH0000726566	Trey Run, LLC	Patent License Agreement	5/10/2011
APLNDC-WH0000728071 - APLNDC-WH0000728093	Eolas Technologies Incorporated	Confidential Settlement and License Agreement	8/3/2011
APLNDC-WH0000728094 – APLNDC-WH0000728112 and APLNDC-WH0000728113 – APLNDC-WH0000728131	Fuji Xerox Co., Ltd.	Patent License Agreement	3/31/2011
APLNDC-WH0000728062 - APLNDC-WH0000728070	Advanced Video Technologies, LLC	License Agreement	5/2/2011
APLNDC-WH0000728142 - APLNDC-WH0000728152	Personal Audio, LLC	Settlement and License Agreement	12/8/2011
APLNDC-WH0000728132 - APLNDC-WH0000728141	MasterObjects, Inc.	Settlement and License Agreement	6/1/2011
APLNDC-WH0000728153 - APLNDC-WH0000728172	Digitude Innovations, LLC	License Agreement	9/27/2010
APLNDC-WH0000728173 - APLNDC-WH0000728184	Typhoon Touch Technologies, Inc. and Raymond Tellini	Settlement and License Agreement	9/2/2010
APLNDC-WH0000728185 - APLNDC-WH0000728192	Multi-Format, Inc.	Settlement and License Agreement	11/12/2010
APLNDC-WH0000728193 - APLNDC-WH0000728218	Affinity Labs of Texas, LLC	Settlement, Purchase and License Agreement	9/9/2011

1 12. Samsung's motion makes a passing reference to my analysis of Apple's "Made for
2 iPod" program in connection with my opinions regarding Apple's reasonable royalty damages.
3 The Made for iPod program involves, among other things, a license from Apple to third parties to
4 manufacture an accessory and place a "Made for iPod" logo on the packaging in exchange for a
5 \$4 per unit fee. I did not consider this license comparable to a license of the collection of design
6 rights being asserted by Apple in this lawsuit. I discuss it solely to evaluate a floor below which
7 Apple would not license even a single design right. My overall royalty rate opinion for the
8 collection of design rights that Apple has asserted would not change if I had not considered this
9 program. I have included my discussion of this issue, as found in paragraph 176 of my Original
10 Expert Report, as a part of **Exhibit B** to this declaration.

11 13. In my evaluation of the "Made for iPod" program, I have not referred to any
12 documents that were produced after the end of discovery. Information on the "Made for iPod"
13 program was disclosed at Mr. Buckley's February 23, 2012 deposition, which I attended. The
14 revenues from that program do not appear on any of the royalty reports to which Samsung refers
15 in its motions but are reflected on a different report as discussed on pages 131-132 of Mr.
16 Buckley's deposition. I have attached the relevant excerpts of Mr. Buckley's deposition as
17 **Exhibit C** to this declaration. Finally, I understand that the program agreements to which I refer
18 in my report were produced to Samsung before the end of discovery at APLNDC-Y000148459-
19 73 and APLNDC-Y000148474-78.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st
21 day of May, 2012, at Baltimore, Maryland.

22 /s/ Terry L. Musika
23 Terry L. Musika

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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 Terry L. Musika has concurred in this filing.

Dated: May 31, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs