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Attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

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

Defendants.

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

**DECLARATION OF
CYNDI WHEELER IN SUPPORT
OF APPLE'S ADMINISTRATIVE
MOTION TO FILE DOCUMENTS
UNDER SEAL**

1 I, Cyndi Wheeler, do hereby declare as follows:

2 1. I am an attorney for Apple Inc. (“Apple”). I submit this declaration in support of
3 Apple’s Administrative Motion to File Documents Under Seal. Except as otherwise noted, I have
4 personal knowledge of the matters set forth below. If called as a witness I could and would
5 testify competently as follows.

6 Docket No. 1684

7 2. Docket No. 1684 seeks to seal Exhibits U, V, W, X, Y, BB and FF to the
8 Declaration of Diane C. Hutnyan in Support of Samsung’s Objections and Responses Regarding
9 (1) Exhibits To Be Used With Musika, Bogue, Forlines, Bederson, Williams, Zorn, Paltian, Yang,
10 and (2) Designated Deposition Testimony of Paltian and Zorn (Dkt. 1681, 1682, and 1684) (the
11 “Hutnyan Declaration”).

12 3. With respect to Exhibit FF of the Hutnyan Declaration, I have been informed that
13 Samsung has indicated that Exhibit FF may contain Intel confidential information. (Dkt. 1684 at
14 1.) To the extent that Exhibit FF contains Intel confidential information, Apple expects that Intel
15 will file a declaration in support of sealing. This exhibit does not contain any Apple information
16 that Apple seeks to seal.

17 4. As noted in the August 14, 2012 Declaration of Peter J. Kolovos (Dkt. 1741),
18 Apple does not seek to seal Exhibits U, V, W and X of the Hutnyan Declaration. Nor does Apple
19 seek to seal Exhibit BB to the Hutnyan Declaration.

20 5. This Court has already granted the motion to seal Exhibit Y of the Hutnyan
21 Declaration. (Dkt. 1966 at 4.)

22 Docket No. 1781

23 6. Docket No. 1781 seeks to seal Exhibits 7, 10 and 11 to the Declaration of Curran
24 M. Walker (“Walker Declaration”) in Support of Samsung’s Objections and Responses
25 Regarding Exhibits and Deposition Designations Disclosed on August 15, 2012.

26 7. With respect to Exhibits 7 and 10 to the Walker Declaration, I have been informed
27 that Samsung has indicated that these exhibits may contain Intel and/or Microsoft confidential
28 information. (Dkt. 1781 at 2.) To the extent Exhibit 10 contains Microsoft confidential

1 information, Apple expects Microsoft will file a declaration in support of sealing. Apple
2 understands from counsel for Intel that Intel does not intend to seek sealing of any information in
3 Exhibit 7. These exhibits do not contain any Apple information that Apple seeks to seal.

4 8. Apple does not seek to seal Exhibit 11 to the Walker Declaration.

5 Docket No. 1785

6 9. Docket No. 1785 seeks to seal Apple's Objections and Responses to Objections
7 Regarding David Teece, Tim Williams, Woodward Yang, Seung-Ho Ahn, Richard Donaldson,
8 Hyong Kim, Edward Knightly, Jun Won Lee, Terry Musika, Janusz Ordoover, Karl Rosenbrock,
9 Peter Rossi, Boris Teksler, Michael Walker, Ravin Balakrishnan, Peter Bressler, Won Pyo Hong,
10 Bryan Agnetta, Susan Kare, Minhyouk Lee, Karan Singh, Christopher Stringer, Jungmin Yeo
11 ("Objections and Responses") and Exhibits 1 and 2 to the Declaration of Peter J. Kolovos in
12 Support of Apple's Objections and Responses ("Kolovos Declaration").

13 10. These documents do not contain any Apple information that Apple seeks to seal.
14 Apple also understands from counsel for Intel that Intel does not intend to seek sealing of any
15 information filed at Docket No. 1785.

16 Docket No. 1898

17 11. Docket No. 1898 seeks to seal Exhibits 8, 21, 29, 34, 35, 36, 39, 50, 51, 53 and 73
18 to Samsung's Notice of Filing of Excluded Exhibits.

19 12. Apple does not seek to seal any of these exhibits.

20 Docket No. 1907

21 13. Docket No. 1907 seeks to seal PX63, PX87 and PX2065, filed with Apple's
22 Notice of Filing of Excluded Exhibits.

23 14. PX63 contains Apple-confidential source code. Apple previously moved to seal
24 this material in connection with its motion to seal trial exhibits. (Dkt. No. 1495 at 9-10.) Apple
25 supported the confidentiality of its source code at that time with two declarations—one from
26 Henri Lamiroux, Apple's Vice President of iOS Apps & Frameworks, and one from Beth
27 Kellermann, a Litigation eDiscovery Manager. (Dkt. Nos. 1504, 1505.) Apple's source code is a
28 critical trade secret of Apple. As Apple's declarants have confirmed, Apple derives independent

1 economic value from its source code, and Apple goes to extraordinary lengths to maintain the
2 secrecy and security of its source code. (Dkt. Nos. 1504 ¶¶ 5-8, 1505 ¶¶ 4-9.) If Apple's source
3 code were subject to disclosure and copying, it would amount to a transfer of Apple's investment
4 in developing the iOS source code from it to a competitor, providing an unfair competitive
5 advantage. (Dkt. No. 1505 ¶¶ 6-9.) The Court granted Apple's motion to seal PX63, agreeing
6 that source code is a trade secret. (Dkt. No. 1649 at 8.) Apple respectfully requests the Court
7 confirm that, consistent with its prior order, Apple may file PX63 under seal in connection with
8 its notice of excluded exhibits.

9 15. I have been informed that PX87 and PX2065 may contain Samsung and/or third
10 party confidential information. To the extent they do, Apple expects Samsung and/or a third
11 party, such as Sony-Ericsson, will file a declaration in support of sealing. These documents do
12 not contain any Apple information that Apple seeks to seal.

13 Docket Nos. 1911 and 1912

14 16. Docket Nos. 1911 and 1912 seek to seal Samsung's Proffer of Witness Testimony
15 and Exhibits to the Declaration of Diane Hutnyan in Support of Samsung's Proffer ("Hutnyan
16 Declaration") and the Declaration of Brett Arnold in Support of Samsung's Proffer ("Arnold
17 Declaration").

18 17. Exhibit 14 to the Hutnyan Declaration is an excerpt from the Expert Report of
19 Professor David J. Teece. Paragraphs 128-130 discuss an Apple internal memo that sets forth
20 royalty rates that Apple currently pays for licenses to patents declared essential to the UMTS
21 standard and royalty rates that have been requested by third parties for licenses to patents declared
22 essential to the UMTS standard. As the Court has recognized (*see* Dkt. 1649 at 10-11), the
23 disclosure of this sensitive financial information would harm both Apple and third parties'
24 opportunities to negotiate and consummate license agreements in the future and, accordingly, it is
25 appropriate for such information to be filed under seal. A proposed redacted copy is attached as
26 Exhibit 1.

27 18. Apple does not seek to seal exhibits A, Q, S and T to the Arnold Declaration.
28

1 19. The relief requested in this motion is necessary and is narrowly tailored to protect
2 confidential information.

3 I declare under the penalty of perjury under the laws of the United States of America that
4 the forgoing is true and correct to the best of my knowledge and that this Declaration was
5 executed this 21st day of September, 2012, at Cupertino, CA.

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7 Dated: September 21, 2012

By: /S/ Cyndi Wheeler
 Cyndi Wheeler

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on September 21, 2012 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

/s/ Mark D. Selwyn
Mark D. Selwyn