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11  
 12 Attorneys for Plaintiff and  
 13 Counterclaim-Defendant APPLE INC.

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN JOSE DIVISION

17  
 18 APPLE INC., a California corporation,

19 Plaintiff,

20 v.

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

24 Defendants.

Case No. 11-cv-01846-LHK

**DECLARATION OF GREGORY JOSWIAK  
 IN SUPPORT OF APPLE'S MOTION TO  
 SEAL TRIAL EXHIBITS**

25  
 26  
 27  
 28

1 I, Gregory Joswiak, hereby declare as follows:

2 1. I am a Vice President in Apple's Product Marketing department. I submit this  
3 declaration in support of Apple's motions regarding sealing, filed contemporaneously herewith. I  
4 have personal knowledge of the matters set forth below. If called as a witness I could and would  
5 competently testify as follows.

6 2. I understand Apple seeks to seal highly sensitive documents that disclose Apple's  
7 market research and strategy. If disclosed to the public, this information would expose Apple to  
8 serious competitive harm.

9 3. I understand that Samsung has selected as potential trial exhibits in this action  
10 eight of the quarterly iPhone buyer survey reports that compile and analyze results obtained from  
11 the monthly surveys of iPhone buyers that Apple conducts. The surveys reveal, country-  
12 by-country, what is driving our customers to buy Apple's iPhone products versus other products  
13 such as the Android products that Samsung sells, what features they most use, our customers'  
14 demographics and their level of satisfaction with different aspects of iPhone.

15 4. I understand that Samsung has also selected six iPad tracking studies as potential  
16 trial exhibits. These are very similar in nature to the iPhone buyer surveys. On a quarterly basis,  
17 these studies report on and analyze results obtained from surveys of iPad buyers that Apple  
18 conducts every month. These reports are also international in scope, and report on, and compare,  
19 for different countries, what is driving our customers' decisions to purchase iPad, provide detailed  
20 information on the features and attributes they use, customer demographics, consideration of  
21 other brands and level of satisfaction with different attributes of the product.

22 5. Apple seeks to seal all surveys and tracking studies of iPhone and iPad buyers. No  
23 competitor has access to our customer base to conduct the type of in-depth analysis contained in  
24 our buyer surveys and tracking studies. Getting access to this analysis would be of enormous  
25 benefit to our competitors. Today, a competitor who is trying to take away Apple market share  
26 can only speculate as to the importance that Apple's customers place, for instance, on FaceTime  
27 video calling, battery life, or Siri voice capability. They have to guess as to what demographics –  
28 age, gender, occupation – are most satisfied with Apple's products. Certainly, they do not know

1 how the preferences of customers in, for example, Japan differ from those in Australia, Korea,  
2 France or the United States. Perhaps most importantly, they are unable to observe trends over  
3 time. All of that information is set out in exacting detail in the proposed exhibits. No other entity  
4 could replicate this research because no other entity has access to the customer base that Apple  
5 has. And no other entity could replicate the trend data by conducting its own survey today.

6 6. Also important are the *conclusions* Apple has drawn from the data. Knowing  
7 about Apple's customer base preferences is extremely useful to a competitor, but knowing what  
8 Apple thinks about its customer base preferences is even more valuable. If Apple had access to  
9 this kind of in-depth analysis of our competitors, we could infer what product features our  
10 competitors are likely to offer next, when, and in what markets. Our probability of success in  
11 predicting our competitors' next move next would improve dramatically. Having that level of  
12 insight and confidence in our competitors' next moves would allow us to target our efforts to  
13 prepare products and marketing counterstrategies in the short term, and target our long-term  
14 product plans to stay far ahead of the competition. Given unfettered access to Apple's recent  
15 internal market research, I have no doubt that Apple's competitors would use it as described  
16 above, resulting in serious competitive harm to Apple.

17 7. Because of the extreme sensitivity of this product research information,  
18 distribution of the iPhone buyer surveys and iPad tracking studies is very tightly controlled within  
19 Apple. The documents are stamped as confidential on a "need to know" basis. Consistent with  
20 this designation, *no* internally conducted surveys of Apple customers are allowed to circulate  
21 outside a small, select group of Apple executives. No iPhone-related surveys or iPad-related  
22 surveys are allowed to be distributed to *anyone* outside this group without my personal express  
23 permission, which I regularly refuse. When I do approve further distribution, it is almost always  
24 on a survey question-by-survey question basis, and even then distribution is limited to individuals  
25 who have a demonstrated need to know.

26 8. Trial Exhibit DX614 is the iPhone buyer survey report for the one month period of  
27 August 2010. Trial Exhibit DX772 is the iPhone buyer survey report for the second quarter of  
28 Apple's 2010 fiscal year ("FY '10 Q2"). Trial Exhibit DX773 is the iPhone buyer survey report

1 for FY '10 Q3. Trial Exhibit DX774 is the iPhone buyer survey report for FY '10 Q4. DX775 is  
2 the iPhone buyer survey report for FY '11 Q1. Trial Exhibit DX534 is the iPhone buyer survey  
3 report for FY '11 Q2. DX776 is the iPhone buyer survey report for FY '11 Q3. Trial Exhibit  
4 DX767 is the iPhone buyer survey report for FY '11 Q4. Each of these documents follows a  
5 substantially similar format, reporting on the same type of information for iPhone buyers from  
6 surveys conducted during the period of time that it covers. During this time there was a slight  
7 change to some of the countries on whom we report internationally, but otherwise the reports are  
8 quite similar.

9           9. Each of the eight iPhone buyer survey reports listed in paragraph 8 above are  
10 treated as highly confidential within Apple and are distributed only to a very limited group and on  
11 a need to know basis, as described in paragraph 7 above. Public disclosure of these reports would  
12 cause significant competitive harm to Apple for the reasons described above. It would allow  
13 competitors to target the features that most attract our customers, to learn precisely how different  
14 demographic groups of customers and customers in geographic regions view our products and  
15 how they make use of them. The survey reports contain the conclusions Apple has drawn from  
16 the data. In addition, because these reports span a 2 year period beginning in the second quarter  
17 of 2010, they show the trend as to how this data has changed over time. We consider each of  
18 these eight iPhone buyer survey reports to be current and to contain information of which we  
19 make active use. The earliest survey report, for the month of August 2010, covers iPhone 4, a  
20 phone which Apple still actively markets and sells today. No competitor could replicate this  
21 information without obtaining the information internally from Apple.

22           10. DX768 is the iPad tracking study for the one month period of July 2010, created in  
23 September 2010. DX769 is the iPad tracking study for FY '10 Q4. DX770 is the iPad tracking  
24 study for FY '11 Q1. DX617 is the iPad tracking study for FY '11 Q2. DX771 is the iPad  
25 tracking study for FY '11 Q3. DX766 is the iPad tracking study for FY '11 Q4. As is the case  
26 with the iPhone buyer surveys discussed in this declaration, each of these iPad tracking studies  
27 follows a substantially similar format, and reports and analyses data in response to surveys  
28 containing the same types of questions for the period of time that they address.

1           11.     Apple strictly maintains the confidentiality of each of these iPad tracking studies  
2 in accordance with the procedures described in paragraph 7 above. Public disclosure of the  
3 studies would seriously harm Apple. As with the iPhone buyer studies, it would give our  
4 competitors full access from surveys conducted of our customer database to the reasons why our  
5 customers purchase iPads, how they make use of them and their level of satisfaction broken down  
6 by demographics and country, as well as to the conclusions that Apple itself has drawn from this  
7 data. Together, the five surveys show how this data has changed over the past two years. We  
8 still consider all of this information to be current and make use of it in our marketing and product  
9 decisions. When iPad was first released in April 2010, there was no other product of its kind.  
10 Obtaining information from July 2010 would be incredibly valuable to companies who are trying  
11 to put forward competing products. It shows in great detail how customer preferences have  
12 evolved over the time that iPad has been sold. Even if competitors could reliably survey Apple's  
13 current customers (they cannot) to determine their preferences today, they certainly cannot  
14 reliably reconstruct what Apple customer's preferences were in the past. Accordingly only Apple  
15 has access to the extremely valuable time series of information that shows how customer  
16 preferences have evolved. As the first company to successfully launch a tablet computer with  
17 broad consumer appeal, Apple is far ahead of its competitors in understanding this important new  
18 category of mobile electronic devices. Both the underlying data sets and the insights Apple has  
19 drawn from them are carefully guarded Apple trade secrets. Disclosure to Apple's competitors  
20 would give them inside knowledge of the market and what Apple's customers are thinking and  
21 valuing.

22           12.     I wish to add that Apple is not seeking to seal all of its marketing research  
23 documents in this action. In particular, Apple has made the difficult decision not to seek sealing  
24 of certain marketing research reports that report survey results on iPhone or iPad that were not  
25 limited to Apple's customer base. Some of these reports were created by third party ComTech.  
26 Others were created by Apple's internal marketing research department. Apple has expended  
27 significant effort and expense gathering the information in these different reports and surveys,  
28 and internally treats these documents on a strictly confidential basis as well. However, I

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