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14 AMERICA, INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC
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16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
18

19 APPLE INC., a California corporation,

20 Plaintiff,

21 vs.

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

25 Defendants.
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28

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S EMERGENCY
MISCELLANEOUS ADMINISTRATIVE
REQUEST PURSUANT TO CIVIL L. R. 7-
11 TO STAY ORDER DENYING
ADMINISTRATIVE MOTIONS TO FILE
UNDER SEAL (RE: DOCKET NOS. 769,
799, 822, 824, 845), FOR EXTENSION OF
TIME, AND TO SEAL DOCUMENTS**

1 Pursuant to Civil L.R. 7-11 and 79-5, Defendants Samsung Electronics Co., Ltd., Samsung
2 Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively,
3 “Samsung”) respectfully requests an order staying this Court’s Order Denying Administrative
4 Motions to File Under Seal (Re: Docket Nos. 769, 799, 822, 824, 845) (Dkt. No. 1105), granting
5 an extension of time to file the declaration contemplated by Civil L.R. 79-5(d), and to seal the
6 documents identified in the concurrently filed Declaration of Hankil Kang (“Kang Dec.”).

7 1. From March 5, 2012 through June 19, 2012, Apple, Inc. filed certain administrative
8 motions to file documents under seal (collectively, “motions to file under seal”), as follows:

9 (a) On March 5, 2012, Apple filed an Administrative Motion to File
10 Documents Under Seal. (Dkt. No. 769.)

11 (b) On March 12, 2012, Apple filed an Administrative Motion to File
12 Documents Under Seal. (Dkt. No. 799.)

13 (c) On March 20, 2012, Apple filed an Administrative Motion to File
14 Documents Under Seal. (Dkt. No. 822.)

15 (d) On March 21, 2012, Apple filed an Administrative Motion to File
16 Documents Under Seal. (Dkt. No. 824.)

17 (e) On March 30, 2012, Apple filed an Administrative Motion to File
18 Documents Under Seal. (Dkt. No. 845.)

19 2. On June 19, 2012, the Court issued an Order Denying Administrative Motions to
20 File Under Seal (Re: Docket Nos. 769, 799, 822, 824, 845) (Dkt. No. 1105) (the “Order”).

21 3. Samsung respectfully requests that the Court stay the Order pending the Court's
22 consideration of the concurrently filed Kang Declaration in support of Apple's motions to file
23 under seal. As a result of an administrative oversight, Samsung did not file supporting
24 declarations earlier. (Declaration of Anthony P. Alden (“Alden Dec.”), ¶ 2.)

25 4. Samsung submits that there is good cause to grant the present motion.

26 5. Samsung has carefully reviewed the documents encompassed by Apple's motions
27 to file under seal and has determined that the following documents need *not* be filed under seal:
28

1 (a) From Apple's March 5, 2012 Administrative Motion to File Documents Under Seal
2 (Dkt. No. 769): Reply Declaration of Eric J. Olson in Support of Apple's Motion for Rule
3 37(b)(2) Sanctions for Samsung's Violation of Two Discovery Orders and Exhibit 1 thereto.

4 (b) From Apple's March 5, 2012 Administrative Motion to File Documents Under Seal
5 (Dkt. 799): Exhibits 36 and 37 to the Declaration of Mia Mazza in Support of Apple's Combined
6 Reply in Support of its Motion to Compel Depositions of Samsung's Purported 'Apex' Witnesses
7 and Opposition to Samsung's Motion for a Protective Order;

8 (c) From Apple's March 20, 2012 Administrative Motion to File Documents Under
9 Seal (Dkt. No. 822):

10 (i) Declaration of Grant L. Kim in Support of Apple's Reply in Support of
11 Rule 37(b)(2) Motion Re: Samsung's Violation of January 27, 2012 Damages Discovery Order
12 and Exhibits 10 and 13 – 15 thereto; and

13 (ii) Exhibits B, F, and H to the Declaration of Erik J. Olson in Support of
14 Apple's Reply in Support of Rule 37(b)(2) Motion Re: Samsung's Violation of January 27, 2012
15 Damages Discovery Order.

16 6. Samsung has submitted a declaration establishing that the documents, or portions
17 thereof, that are the subject of Apple's motions to file under seal and are not identified in
18 paragraph 5 above are entitled to protection under the law. (*See* Kang Dec.) The documents that
19 are the subject of the Kang Declaration contain Samsung's highly confidential business
20 information, including but not limited to information regarding the design and development of
21 Samsung's products, highly confidential financial data, internal business structure, product
22 development and engineering, product evaluation and competitive analysis, marketing research
23 and strategies, and the nature of Samsung's relationships with its business partners. These
24 documents are designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS'
25 EYES ONLY under the Protective Order in this matter.

26 7. Granting Samsung's motion will not prejudice any party, as the material at issue
27 has remained outside the public record from the time Apple filed its motions to file under seal.
28

1 The Court has granted several other administrative requests to seal in this action, and deferring
2 action on Apple's motions to file under seal will not prejudice anyone.

3 8. In contrast, if Samsung's motion were to be denied, Samsung will suffer grave
4 competitive and commercial harm by the disclosure of its confidential information. Disclosure of
5 this information, for example, may interfere with Samsung's business relationships with suppliers
6 and distributors, allow Samsung's competitors to undercut Samsung's pricing strategies, or allow
7 Samsung competitors to interfere with Samsung's marketing and advertising strategies. *See*
8 *Powertech Techn., Inc. v. Tessera, Inc.*, 2012 WL 1969039, at *1-2 (N.D. Cal. May 31, 2012)
9 (granting plaintiff's motion to seal to prevent harm caused by "by giving its competitors []
10 proprietary information"); *Davis v. Soc. Serv. Coordinators*, 2012 WL 1940677, at *3 (E.D. Cal.
11 May 29, 2012) (granting request to seal documents where disclosure may cause movant
12 "competitive harm").

13 9. Samsung should not be injured by an inadvertent error and the public interest
14 favors granting Samsung's motion. "[T]here can be no doubt that society in general is interested
15 in the protection of trade secrets and other valuable commercial information." *Zenith Radio Corp.*
16 *v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 905 (E.D. Pa. 1981); *see also Nixon v. Warner*
17 *Comm'ns, Inc.*, 435 U.S. 589, 598 (1978) ("courts have refused to permit their files to serve . . . as
18 sources of business information that might harm a litigant's competitive standing").

19 10. As explained in the accompanying Declaration of Anthony P. Alden, Samsung
20 sought to obtain consent from Apple before filing the present motion pursuant to Civil L. R. 7-11.
21 However, Apple's counsel stated that he could not provide Apple's position because his client
22 contact is out of town and may not be available until the morning of June 20, 2012. (Alden Dec.,
23 ¶ 3.)

24 For all these reasons, Samsung respectfully requests that the Court stay the Order Denying
25 Administrative Motions to File Under Seal (Re: Docket Nos. 769, 799, 822, 824, 845) (Dkt. No.
26 1105) pending the Court's consideration of the Kang Declaration and seal the documents identified
27 in the Kang Declaration.

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A proposed order is submitted herewith.

Respectfully,

DATED: June 19, 2012

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Victoria F. Maroulis

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