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 14 AMERICA, INC. and SAMSUNG  
 TELECOMMUNICATIONS AMERICA, LLC  
 15

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.  
 26  
 27  
 28

CASE NO. 11-cv-01846-LHK (PSG)

**SAMSUNG’S MOTION FOR  
 RECONSIDERATION OF THE COURT’S  
 JUNE 21, 2012 ORDER (DKT. NO. 1115)  
 DENYING SAMSUNG’S REQUEST TO  
 STAY, FOR EXTENSION OF TIME, AND  
 TO SEAL DOCUMENTS**

Judge: The Hon. Paul. S. Grewal  
 Courtroom: 5, 4th Floor

1 Pursuant to the Court's June 22, 2012 Civil Minute Order (Dkt. No. 1118), Defendants  
2 Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung  
3 Telecommunications America, LLC (collectively, "Samsung") respectfully move for  
4 reconsideration of the Court's June 21, 2012 Order (Dkt. No. 1115) denying Samsung's request to  
5 stay, for extension of time, and to seal documents in five of Apple's Administrative Motions to  
6 File Under Seal (Dkt. Nos. 769, 799, 822, 824, 845) (collectively, "Motions to File Under Seal").

7 **Request for Relief**

8 1. Samsung has carefully reviewed, page-by-page, each of the 84 documents  
9 encompassed by Apple's Motions to File Under Seal, and has identified narrow portions of only  
10 17 of these documents that it seeks to seal as a trade secret or as otherwise entitled to protection  
11 under the law, as provided for in Civil L.R. 79-5(a) ("Sealable Material").

12 2. Exhibit 1 attached hereto contains Tables A and B. These Tables identify each of  
13 the 84 documents encompassed by Apple's Motions to File Under Seal and categorize them as  
14 either: (a) documents that need not be filed under seal; or (b) documents from which certain  
15 portions should be sealed, as provided for in Civil L.R. 79-5(c). Moreover, Table B identifies, on  
16 a page-by-page basis, why each identified portion of each of the 17 documents should be sealed.

17 3. In keeping with the Court's instructions to narrowly tailor any requested sealing,  
18 Samsung is not requesting the sealing of any document in its entirety, but rather only selected  
19 portions within a limited subset of 17 documents.

20 4. For the reasons stated herein and in the earlier-filed pleadings, Samsung requests  
21 that the Court grant in part Apple's Motions to File Under Seal and permit the sealing of only  
22 certain portions of the 17 documents identified in Exhibit 1, Table B.

23 **Good Cause Exists to Grant the Narrowly Tailored Sealing Requested Here**

24 5. Samsung submits the accompanying Declaration of Hankil Kang ("Kang Decl.") to  
25 establish that the Sealable Material identified therein is entitled to protection under the law.

26 6. The Sealable Material contains Samsung's highly confidential and commercially  
27 sensitive business information, which is privileged or protectable as a trade secret under Civil L.R.  
28 79-5 and applicable federal law.

1           7.       After careful review, it has been confirmed that the Sealable Material contains  
2 highly confidential and commercially sensitive information falling into one or more of the  
3 following limited categories: (a) recent Samsung financial data; (b) Samsung source code; (c) the  
4 design and development of unreleased Samsung products; and/or (d) future business or operational  
5 plans, such as financial goals and planned responses to market developments. All of this  
6 information is closely guarded by Samsung and has never been publically disclosed.

7           8.       For example, the Sealable Material contains Samsung financial documents that  
8 disclose in detail Samsung's average selling prices, revenues, profits, and costs for particular  
9 product models.<sup>1</sup> Disclosure of this highly sensitive financial information would interfere with  
10 Samsung's business relationships with suppliers and distributors, and allow Samsung's  
11 competitors to undercut Samsung's pricing strategies and interfere with Samsung's marketing and  
12 advertising plans.

13           9.       In addition, the Sealable Material contains sensitive information concerning  
14 changes and updates made to the source code of the accused products, and directly cites Samsung  
15 source code.<sup>2</sup> Source code is protectable as a trade secret.

16           10.      The Sealable Material also contains internal discussions of future Samsung  
17 products that are still in development.<sup>3</sup> Disclosure of this information would allow competitors to  
18 \_\_\_\_\_

19           <sup>1</sup> See, e.g., Kang Decl., Ex. 5 – Exhibit 30 to the Declaration of Mia Mazza in Support of  
20 Apple's Apex Reply ("Mazza Decl.") (Dkt. No. 799); Kang Decl., Ex. 8 – Apple's Reply Brief in  
21 Support of Rule 37(b)(2) Motion Re: Samsung's Violation of January 27, 2012 Damages  
22 Discovery Order ("Apple's Damages Sanctions Reply") (Dkt. No. 822); Kang Decl., Exs. 9, 10 –  
23 Exhibits A and I to the Declaration of Erik J. Olson in Support of Apple's Damages Sanctions  
24 Reply ("Olson Decl.") (*id.*) (*see also* Dkt. No. 824 (moving to seal Exhibit I to the Olson Decl.));  
Kang Decl., Exs. 11-14 – Declaration of Eric R. Roberts in Support of Apple's Damages  
Sanctions Reply ("Roberts Decl.") and Exhibits A, B, and C thereto (Dkt. No. 822); Kang Decl.,  
Exs. 15, 16 – Exhibits 16 and 18 to the Declaration of Grant Kim in Support of Apple's Damages  
Sanctions Reply ("Kim Decl.") (*id.*).

25           <sup>2</sup> See, e.g., Kang Decl., Exs. 1-3 – Exhibits C, D, and E to the Reply Declaration of Minn  
26 Chung in Support of Apple's Motion for Rule 37(b)(2) Sanctions for Samsung's Violation of Two  
27 Discovery Orders ("Chung Decl.") (Dkt. No. 769); Kang Decl., Exs. 6, 7 – Exhibits 35 and 38 to  
28 the Mazza Decl. (Dkt. No. 799); Kang Decl., Ex. 17 – Exhibit D to the Reply Declaration of Marc  
J. Pernick in Support of Apple's Rule 37(b)(2) Motion Based on Samsung's Violation of the  
Court's December 22, 2011 Order Regarding Source Code ("Pernick Decl.") (Dkt. No. 845).

1 counter whatever competitive edges these products have and thereby diminish their success in the  
2 market. As the Court knows, the smartphones market is highly competitive and a company's  
3 future product line up can have a tremendous impact on its profitability.

4 11. Similarly, the disclosure of trade secret information concerning Samsung's future  
5 business and operational plans would allow competitors to blunt the effectiveness of these  
6 strategies before they are even implemented.<sup>4</sup> For example, a plan to reduce material costs by  
7 even several dollars per phone, and thereby reduce the costs to potential customers, could be met  
8 by a preemptive reduction in the prices of competitors' phones.

9 12. Disclosure of such highly confidential and commercially sensitive information  
10 would threaten Samsung with grave competitive harm, and accordingly the law authorizes this  
11 Court to protect it from disclosure. *See Powertech Techn., Inc. v. Tessera, Inc.*, 2012 WL  
12 1969039, at \*1-2 (N.D. Cal. May 31, 2012) (granting plaintiff's motion to seal to prevent harm  
13 caused by "by giving its competitors [] proprietary information"); *Davis v. Soc. Serv.*  
14 *Coordinators*, 2012 WL 1940677, at \*3 (E.D. Cal. May 29, 2012) (granting request to seal  
15 documents where disclosure may cause movant "competitive harm").

16 13. Samsung has made every effort to exclude from the Sealable Material all non-  
17 confidential information and even confidential information that is not so commercially sensitive as  
18 to likely cause commercial harm by its disclosure. Indeed, although Apple's Motions to File  
19 Under Seal are directed to 84 documents, Samsung requests that only selected portions of just 17  
20 documents be sealed.

21 14. Granting Samsung's narrowly tailored relief will not prejudice any party, because  
22 the material at issue has remained outside the public record from the time Apple filed its Motions  
23 to File Under Seal. Samsung should not be injured by an inadvertent calendaring error and the  
24 public interest favors granting Samsung's narrowly tailored request. "[T]here can be no doubt that  
25 society in general is interested in the protection of trade secrets and other valuable commercial

26 \_\_\_\_\_  
27 <sup>3</sup> *See, e.g.*, Kang Decl., Ex. 4 – Exhibit 26 to the Mazza Decl. (Dkt. 799).

28 <sup>4</sup> *See, e.g.*, Kang Decl., Ex. 9 – Exhibit A to the Olson Decl. (Dkt. No. 822).

1 information.” *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 529 F. Supp. 866, 905 (E.D. Pa.  
2 1981); *see also Nixon v. Warner Comm’ns, Inc.*, 435 U.S. 589, 598 (1978) (“courts have refused to  
3 permit their files to serve . . . as sources of business information that might harm a litigant’s  
4 competitive standing”).

5 15. Samsung sought to obtain consent from Apple for the requested sealing. At the  
6 June 22, 2012 telephonic hearing (*see* Dkt. No. 1118), Apple’s counsel stated that Apple would  
7 take no position with respect to Samsung’s request.

8 16. For all these reasons, Samsung respectfully requests that the Court grant Samsung’s  
9 Motion for Reconsideration as to only the narrowly tailored portions of the 17 documents  
10 identified in Exhibit 1, Table B, and allow them to be filed under seal.

11 17. A proposed order is submitted herewith.

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13 Respectfully submitted,

14 DATED: June 25, 2012

QUINN EMANUEL URQUHART &  
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By /s/ Victoria F. Maroulis

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