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 7 INTERDIGITAL TECHNOLOGY
 CORPORATION and
 8 INTERDIGITAL COMMUNICATIONS LLC

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION
 12

13	APPLE, INC., a California Corporation,	)	CASE NO.: 11-CV-01846-LHK
14	Plaintiff,)	
15	v.	)	EMERGENCY MOTION BY NON-
16	SAMSUNG ELECTRONICS CO., LTD., a	)	PARTIES INTERDIGITAL
17	Korean corporation; SAMSUNG	)	COMMUNICATIONS, LLC AND
18	ELECTRONICS AMERICA, INC., a New York	)	INTERDIGITAL TECHNOLOGY
19	corporation; SAMSUNG	)	CORPORATION FOR AN ORDER
20	TELECOMMUNICATIONS AMERICA, LLC, a	)	CLOSING THE COURTROOM AND
21	Delaware limited liability company,	)	SEALING THE TRANSCRIPT
22	Defendants.	)	DURING DISCUSSION OF
23		)	INTERDIGITAL'S CONFIDENTIAL
24		)	INFORMATION
25		)	[Civ. L.R. 79-5]
26		)	Date: Expedited Request
27		)	Courtroom: 8, 4th Floor
28		)	Judge: Hon. Lucy H. Koh

25 **I. INTRODUCTION**

26 Trial in this action is scheduled to begin on July 30, 2012. Non-parties InterDigital
 27 Technology Corporation and InterDigital Communications, LLC (collectively, "InterDigital")
 28 first learned via email sent on Sunday morning, July 22, 2012, at 12:33 a.m. by Samsung's

1 counsel that highly confidential documents relating to InterDigital’s license agreements may be
2 publicly disclosed during the trial (the “InterDigital Confidential Documents”). Pursuant to Civil
3 Local Rules 7-11 and 79-5 and the Order Regarding Third Party Motions to Seal entered by this
4 Court on July 23, 2012 (Dkt. No. 1288), and due to the short notice provided to it, InterDigital
5 files this Emergency Motion for an Order Closing the Courtroom and Sealing the Trial
6 Transcript During Discussion of InterDigital’s Confidential Information (“InterDigital’s
7 Emergency Motion to Seal”).

8 InterDigital has communicated with Samsung about InterDigital’s request to protect its
9 confidential information from public disclosure. Samsung has not objected to InterDigital’s
10 request to keep its information confidential and has agreed to stipulate to InterDigital’s motion.
11 Nevertheless, InterDigital has not reached a stipulation with Apple or Third Party Intervenor
12 Reuters America. Public disclosure of the InterDigital Confidential Documents – which were
13 produced under the protective order in this proceeding as “Highly Confidential – Attorneys Eyes
14 Only” material – would cause substantial harm to InterDigital’s bargaining and competitive
15 position. InterDigital respectfully submits that, as shown below, compelling reasons exist to grant
16 this motion. This motion is supported by the Declaration of Michael B. Levin and the Declaration
17 of Lawrence F. Shay, filed herewith.
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20 **II. ARGUMENT**

21 InterDigital is cognizant of Civil Local Rule 79-5 and the importance of public access to
22 documents. This Court is nevertheless empowered to protect the confidential and competitively
23 sensitive information of a third party. The sealing of judicial records is part of the inherent
24 supervisory power of the courts. *See Hagestad v. Tragesser*, 49 F.3d 1430, 1433–1434 (9th Cir.
25 1995). Documents submitted with a dispositive motion may be filed under seal where there are
26 “compelling reasons” to do so. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180
27 (9th Cir. 2006). While normally the public would have presumption of access to information
28 submitted with a dispositive motion, the presumption of access should “bow[] before the power

1 of a court to insure that its records are not used . . . as sources of business information that might
2 harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598
3 (1978).¹ Such protection is warranted here, based on the facts set forth below.

4 On July 22, 2012, Samsung notified InterDigital that Samsung has designated potential
5 trial exhibits that contain InterDigital Confidential Documents. See Declaration of Michael B.
6 Levin in Support of InterDigital’s Emergency Motion to Seal dated July 25, 2012 and filed
7 herewith (“Levin Decl.”) ¶ 2. Specifically, the InterDigital Confidential Documents included in
8 the trial exhibits identified by Samsung in its letter consist of the following: (a) a Patent License
9 and Settlement Agreement entered into as of November 24, 2008, between Samsung and
10 InterDigital (the “Samsung–InterDigital PLA”) – included in Trial Exhibit 77; (b) a table
11 summarizing key terms of the Samsung–InterDigital PLA, attached as Exhibit 3A to Samsung’s
12 Expert Report of David Teece, dated March 22, 2012 – included in Trial Exhibit 630; and (c) a
13 table summarizing key terms of the Wireless Patent License Agreement between Apple, Inc. and
14 InterDigital (the “Apple–InterDigital PLA”), attached as Exhibit 3B to Samsung’s Expert Report
15 of David Teece, dated March 22, 2012 – included in Trial Exhibit 630. *Id.*²

16 ¹ See also *In re Elec. Arts, Inc.* 298 Fed. Appx. 568, 569-570, No. 08-74426, 2008 WL
17 4726222, at *2 (9th Cir. Oct. 28, 2008) (granting mandamus; finding that the district court erred as
18 a matter of law by concluding that petitioner failed to meet the “compelling reasons” standard in
19 seeking to seal pricing terms, royalty rates, and guaranteed minimum payment terms of its license
20 agreement; noting that this information “plainly falls within the definition of ‘trade secrets’”);
21 *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F. 2d 157, 166 (3d Cir. 1993) (“Documents
22 containing . . . confidential business information may be protected from disclosure.”); *SmithKline
23 Beecham Corp. v. Pentech Pharms., Inc.*, 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003) (granting
24 motion to seal where the document at issue “contain[ed] information . . . that might give other
25 firms an unearned competitive advantage—unearned because the issue of public disclosure arises
26 from the adventitious circumstance of the agreement’s having become caught up in litigation and
27 as a result having become filed in court”); *TriQuint Semiconductor, Inc. v. Avago Techs., Ltd.* No.
28 CV 09-1531-PHX-JAT, 2011 WL 4947343, at *2 (D.Ariz. Oct. 18, 2011) (finding that plaintiff
has shown compelling reasons for sealing its draft patent license agreement because “the terms
and conditions to which [it] subjects its licensees are business decisions that affect [its]
profitability;” noting that this kind of information constitutes a trade secret).

² InterDigital has requested Samsung to provide Trial Exhibits 77 and 630 in their entirety so
as to allow InterDigital to redact its confidential information as presented in those exhibits and
lodge them with the Clerk pursuant to Civ. L.R 79-5 (b)-(c). Samsung has not provided these
exhibits to InterDigital in their entirety. Thus, InterDigital has only excerpts of these exhibits, as
provided to it by Samsung, available for filing with this motion. Levin Decl. ¶ 3.

1 Here, compelling reasons exist to maintain under seal the InterDigital Confidential
2 Documents included in Trial Exhibits 77 and 630. They contain competitively sensitive,
3 confidential business information, including (i) specific, non-public terms of the Samsung –
4 InterDigital PLA (including terms pertaining to schedule of payments, licensed wireless
5 standards, and excluded licensed wireless standards);³ (ii) specific, non-public terms of the
6 Apple – InterDigital PLA (including terms related to the monetary consideration and licensed
7 wireless standards); and (iii) information concerning InterDigital’s licensing strategies and
8 negotiations with Samsung, Apple, and other third parties. *See* Declaration of Lawrence F. Shay
9 in Support of InterDigital’s Emergency Motion to Seal, dated July 25, 2012 and filed herewith
10 (“Shay Decl.”) at ¶¶ 2 -3.

11 Public disclosure of the InterDigital Confidential Business Information would cause
12 substantial harm to InterDigital’s bargaining and competitive position. *Id.* at ¶ 5. The
13 competition for revenues within the highly competitive wireless communications industry creates
14 a business environment in which confidential information, including pricing information and
15 legal strategies, must be diligently protected to enable InterDigital to maintain competitive
16 viability. *Id.* InterDigital derives a large portion of its profits from its licensing activities. *Id.*
17 The terms and conditions to which InterDigital subjects its licensees are business decisions that
18 affect InterDigital’s profitability. *Id.* Accordingly, compelling reasons exist for sealing the
19 InterDigital Confidential Documents.

20 To the extent that the InterDigital Confidential Documents have any relevance to this
21 case at all, the relevance is limited to narrow, discrete issues. Accordingly, maintaining the
22 confidentiality of these documents, closing the courtroom and sealing the transcript for those
23 limited portions should result in minimal disruption to the trial.

24
25 ³ InterDigital has publicly filed a *redacted* version of the Samsung – InterDigital PLA with
26 the United States Securities and Exchange Commission (“SEC”). However, the version of the
27 PLA that Samsung has included in Trial Exhibit 77 is unredacted and contains sensitive,
28 confidential information that is not contained in, and was properly redacted from, the publicly
available version filed with the SEC. Shay Decl. ¶ 4.

1 **III. CONCLUSION**

2 For the foregoing reasons, InterDigital respectfully requests the Court to enter
3 InterDigital's Proposed Order to:

- 4 1) Seal those portions of the Samsung–InterDigital PLA included in Trial Exhibit 77
5 reflecting the same redactions made by InterDigital in its disclosure of the PLA in its
6 2009 filing with the United States Securities and Exchange Commission;
- 7 2) Seal the last three lines of the last paragraph located in the column titled “Licensed
8 Products/Technology” in the table summarizing key terms of the Samsung–
9 InterDigital PLA, attached as Exhibit 3A to Samsung’s Expert Report of David
10 Teece, dated March 22, 2012 – included in Trial Exhibit 630; and
- 11 3) Seal the columns titled “Licensed Products/Technology” and “Payments” in the table
12 summarizing key terms of the Wireless Patent License Agreement between Apple
13 Inc. and InterDigital (the “Apple–InterDigital PLA”), attached as Exhibit 3B to
14 Samsung’s Expert Report of David Teece, dated March 22, 2012 – included in Trial
15 Exhibit 630.
- 16 4) Either (a) exclude from the courtroom, during any discussion or display of the
17 InterDigital Confidential Documents, those members of the public and litigants not
18 authorized to view “Highly Confidential – Attorneys Eyes Only” material or,
19 alternatively (b) order that any exhibit containing the InterDigital Confidential
20 Documents shall not be displayed in such a manner that its contents are visible to the
21 public gallery in the courtroom;
- 22 5) Seal any portions of the trial transcript containing discussion of InterDigital
23 Confidential Documents; and
- 24 6) Seal any exhibits entered at trial that comprise or contain excerpts from InterDigital
25 Confidential Documents.
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Dated: July 25, 2012

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Michael B. Levin
Michael B. Levin

Attorneys for Non-Parties
INTERDIGITAL TECHNOLOGY
CORPORATION and
INTERDIGITAL COMMUNICATIONS, LLC

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ATTESTATION OF E-FILED SIGNATURE

I, Corina I. Cacovean, am the ECF User whose ID and password are being used to file this Motion. In compliance with General Order 45, X.B., I hereby attest that Michael B. Levin has concurred in this filing.

Dated: July 25, 2012

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ Corina I. Cacovean
Corina I. Cacovean

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