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 13 INTERNATIONAL BUSINESS MACHINES CORPORATION

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

17 APPLE INC., a California corporation,  
 18 Plaintiff,  
 19 v.  
 20 SAMSUNG ELECTRONICS CO., LTD., a  
 21 Korean corporation; SAMSUNG  
 22 ELECTRONICS AMERICA, INC., a New  
 23 York corporation; and SAMSUNG  
 24 TELECOMMUNICATIONS AMERICA,  
 25 LLC, a Delaware limited liability company,  
 26 Defendants.

CASE NO. 11-CV-01846-LHK (PSG)  
 NON-PARTY INTERNATIONAL BUSINESS  
 MACHINES CORPORATION'S NOTICE OF  
 EMERGENCY ADMINISTRATIVE MOTION  
 FOR A LIMITED SEALING ORDER

Judge: Hon. Judge Lucy H. Koh

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1                    **EMERGENCY ADMINISTRATIVE MOTION FOR A LIMITED SEALING ORDER**

2                    Pursuant to the Court’s Order of July 23, 2012 (Dkt. No. 1288), and Civil Local Rules 7-  
3 11 and 79-5, International Business Machines Corporation (“IBM”) submits this administrative  
4 motion requesting an order sealing two financial figures in a single document, Samsung Trial  
5 Exhibit 630, which are commercially sensitive to Non Party IBM. There are compelling reasons  
6 for a narrowly tailored sealing of this information.

7                    Samsung recently informed IBM that it intends use a trial exhibit that includes a summary  
8 of a license agreement between Samsung and IBM. In particular, Samsung designated as  
9 potential trial exhibit No. 630 a table summarizing key terms of a December 22, 2010 IBM-  
10 Samsung Patent License Agreement (“PLA”). This exhibit lists two amounts that the IBM-  
11 Samsung PLA specifies as balancing payments, which are payments from one party to the other  
12 to account for differences in the size and relevance of the respective patent portfolios. *See King*  
13 *Declaration* ¶ 3.

14                    IBM requests an order sealing the portion of this exhibit that lists the balancing payment  
15 amounts in the IBM-Samsung PLA. To the extent there are other exhibits or testimony that  
16 would also disclose those amounts, but that have not been brought to IBM’s attention by  
17 Samsung or Apple, IBM also requests sealing those amounts in such other exhibits or testimony.

18                    There are compelling reasons for sealing this commercially sensitive information. Public  
19 disclosure of the amount of payments under IBM’s license agreements would negatively impact  
20 IBM in future license and settlement negotiations by giving potential licensees the ability to  
21 derive IBM’s methodology. *King Dec.* ¶ 5. That methodology, which subsumes the exact factors  
22 IBM relies upon and how it weights those factors, is a valuable secret. *King Dec.* ¶ 4. The  
23 amount of the balancing payment in a particular agreement, such as the 2010 IBM-Samsung  
24 Patent License Agreement, is a significant data point towards reverse engineering IBM’s pricing  
25 methodology. *King Dec.* ¶ 5. Competitors and potential counterparties to licensing and  
26 settlement agreements would gain an unfair insight into IBM’s analyses, particularly as IBM  
27 would know nothing about their methodology for the negotiations. *Id.* By using their knowledge  
28 of the precise substantive and financial terms of this previously nonpublic agreement, this unfair

1 advantage would allow them to calibrate their negotiation strategies to the detriment of IBM. *Id.*  
2 Accordingly, confidential license agreements have been consistently held by courts to meet the  
3 “compelling reasons” standard of the Ninth Circuit. *See, e.g., Electronic Arts, Inc. v. United*  
4 *States District Court for the Northern District of California*, 298 Fed. Appx. 568, 569 (9th Cir.  
5 2008) (pricing terms, royalty rates, guaranteed minimum payment terms of licensing agreement  
6 constituted trade secret); *Powertech Tec., Inc., v. Tessera, Inc.*, 2012 U.S. Dist. LEXIS 75831, at  
7 \*5 (N.D. Cal. May 31, 2012) (compelling reasons to seal license agreement).

8 In view of the Court’s Order of July 17, 2012 (Dkt. No. 1256), IBM’s request is very  
9 narrowly tailored to the sealing of just two amounts that are shown on Samsung’s Trial Exhibit  
10 630. There is very little public interest in knowing the specific amounts under this particular  
11 proprietary agreement. The 2010 IBM-Samsung Patent License Agreement requires the parties to  
12 maintain the confidentiality of its terms, King Decl. ¶ 6, and Non Party IBM relies upon that  
13 confidentiality obligation to protect its sensitive corporate information. *See In re Adobe Systems,*  
14 *Inc. Sec. Litigation*, 141 F.R.D. 155, 161-62 (N.D. Cal. 1992) (under-seal filings preserve third  
15 parties’ “legitimate expectation that confidential business information, proprietary technology and  
16 trade secrets will not be publicly disseminated”). For the reasons stated above, the public  
17 disclosure of the commercially sensitive balancing payment amounts specified in that agreement  
18 would harm IBM's active and substantial patent licensing business. King Dec. ¶ 3, 6.

19 This Motion is accompanied by a declaration of Kenneth S. King and a Joint Stipulation  
20 and Proposed Order. IBM has lodged with the Court two unredacted copies of an excerpt of  
21 Samsung proposed trial exhibit No. 630, of which IBM is requesting partial sealing. This excerpt  
22 is the only part of proposed exhibit No. 630 to which IBM has access. IBM also has attached a  
23 redacted copy of this document hereto as Exhibit A, which IBM does not object to being included  
24 in the public record.

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DATED: July 26, 2012

KING & SPALDING LLP

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INTERNATIONAL BUSINESS MACHINES  
CORPORATION

# **EXHIBIT A**

**IBM**

Trial Exhibit 630: Exhibits 3A and 3B to the Expert Report of David Teece, an expert retained by Apple, dated March 22, 2012. Exhibit 3A is a table summarizing the key terms of various contracts between Samsung and third parties to the litigation. Exhibit 3B contains a table summarizing the key terms of various contracts between Apple and third parties to the litigation.

Trial Exhibit 630 contains the following information about your company:

**Exhibit 3A  
Summary of Samsung License Agreements**

Licensor	Title	Effective Date	Date Last Signed	Term	Licensed Products/Technology	Geographic Scope	Payments	Source
International Business Machines Corporation	License Reference Number: L106170	12/22/2010	12/22/2010	Last to expire of the Licensed Patents	Information Handling System Products Information (excluding System z Products)	Worldwide	<p>Cross-License</p> <p>Samsung to pay IBM [REDACTED] lump sum payment</p> <p>Samsung has the option to change the Patent Capture Date to December 21, 2020 in which Samsung would pay IBM [REDACTED] (in installments)</p>	S-794-ITC-000000245 to S-794-ITC-000000273