v. San	nsung Electronics Co. Ltd. et al		
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8	UNITED STATES DISTRICT COURT		
9	NORTHERN DISTRICT OF CALIFORNIA		
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11	SAN JOSE DIVISION		
12	APPLE INC., a California corporation,	Case No. 11-cv-01846-LHK	
13	Plaintiff,	Case No. 11-CV-01040-LIIK	
14	v.		
15	SAMSUNG ELECTRONICS CO., LTD., a	NON-PARTY QUALCOMM INCORPORATED'S	
16	Korean corporation; SAMSUNG ELECTRONICS AMERICA, INC., a New	ADMINISTRATIVE MOTION TO SEAL CONFIDENTIAL	
17	York corporation; and SAMSUNG TELECOMMUNICATIONS AMERICA,	INFORMATION PURSUANT TO CIVIL L. R. 7-11 & 79-5	
18	LLC, a Delaware limited liability company,	CIVIL L. R. 7-11 & 75-3	
19	Defendants.		
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28	Case No.: 11-CV-01846-LHK		
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<sup>&</sup>lt;sup>1</sup> Agreements amending the Infrastructure and Subscriber Unit License Agreement dated August 31, 1993 have been entered by the parties effective November 17, 1997; March 29, 2004; December 26, 2005; October 29, 2007; and January 1, 2009.

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Although Qualcomm is a stranger to this litigation, its interests nonetheless risk being affected by these proceedings in a serious and unfair manner because confidential and highly sensitive Qualcomm business information will be disclosed to third parties if the terms of the Samsung Agreements are entered into evidence before this Court in the absence of a sealing order.

This Court has observed that notwithstanding the strong presumption of the law in favor of public access to judicial records, "exceptionally sensitive" information that forms part of the evidence at trial may "truly deserve protection" and be sealed upon a showing of "compelling reasons". Order Denying Motions to Seal and Remove Incorrectly Filed Documents, *Apple Inc. v. Samsung Electronics Co.*, No. 11-CV-01846-LHK (N.D. Cal. July 20, 2012), ECF No. 1269 at 1, 3 (quoting *Oracle Am. v. Google, Inc.*, No. 10-CV-03561-WHA, ECF No. 540). In the Ninth Circuit, such compelling reasons "outweigh the general history of access and the public interest in understanding the judicial process", and explicitly include situations "when such court files . . . become a vehicle for improper purposes such as the use of records to . . . release trade secrets." *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2009) (internal quotation marks omitted); *see also Nixon v. Warner Commc'ns. Inc.*, 435 U.S. 589, 598 (1978).

This is *precisely* the issue presented by Qualcomm's motion. The Samsung Agreements are predominantly licenses between Qualcomm and Samsung and amendments to such licenses, entered over a period of nearly twenty years, through which each party has structured its rights to the other's valuable intellectual property and secured compensation for the use of its own intellectual property. (*See* Reif. Decl. ¶ 2.) Appropriately, the law acknowledges that such license terms commonly constitute trade secrets, *see*, *e.g.*, *In re Electronic Arts*, *Inc.*, 298 Fed. App'x 568, 569 (9th Cir. 2008) (holding that that "pricing terms, royalty rates, and guaranteed minimum payment terms" found in a license agreement "plainly fall[] within the definition of trade secrets"), and

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JAT, 2011 WL 4947343, at \*2 (D. Ariz. Oct. 18, 2011) (granting a motion to seal draft license agreements because the "kind of information in a licensing agreement constitutes a trade secret that could harm a litigant's competitive standing"). Qualcomm's motion to seal the contents of the Samsung Agreements falls

courts in this Circuit have accordingly permitted license agreements to be filed under seal

in their entirety. See Triquint Semiconductor, Inc. v. Avago Tech. Ltd., No. 09-CV-1531-

squarely within the holdings of these cases.

First, the expectation of both parties to the Samsung Agreements was that the terms of these Agreements would be held in strict confidence precisely because they contain trade secrets. Indeed, the Samsung Agreements explicitly require each party to keep their terms confidential. (Reif. Decl. ¶ 2-3.) Qualcomm's expectation of confidentiality would be unfairly and inappropriately defeated if the terms of the Samsung Agreements became available to third parties solely because its counterparty subsequently became involved in litigation.

Second, a sealing order would avoid injury to the "competitive standing" of Qualcomm that would otherwise be occasioned by the accessibility of its confidential licensing information to third parties. See Nixon, 435 U.S. at 598 ("the common-law right of inspection has bowed before the power of a court to insure that its records are not . . . [used] as sources of business information that might harm a litigant's competitive standing."). As Mr. Reifschneider's declaration details, the Samsung Agreements contain sensitive information the public availability of which would harm Qualcomm's ability to compete in its markets, including:

- unique "financial terms disclos[ing] the careful balancing of past, current, and future value exchanged in the Qualcomm-Samsung relationship" (Reif. Decl. ¶ 6);
- the terms under which Qualcomm received rights to practice Samsung's patents (Reif. Decl. ¶ 7);

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 the terms under which Samsung agreed to assign a substantial number of patents to Qualcomm as part of a broader agreement between the parties (Reif. Decl. ¶ 8);

- the scope and duration of the Agreements (Reif. Decl. ¶ 2);
- the conditions under which the parties may terminate certain rights under the Agreements (Reif. Decl. ¶ 9).

Finally, Qualcomm's status as a stranger to this litigation attenuates any public interest in accessing Qualcomm's confidential information because it increases substantially the likelihood that this information is merely tangential to the disposition of the causes of action between the parties to the litigation before this Court. See Triquint Semiconductor, 2011 WL 4947343, at \*2 ("where, as here, the documents are only tangentially related to the underlying causes of action, the public need is lessened."). Against this diminished public interest in access, the Court should weigh the law's proper reluctance to allow public access to judicial records to result in the disclosure of trade secrets—which must apply a fortiori to the trade secrets of a disinterested non-party to litigation. The Court should also consider that the only segment of the "public" with any real interest in these trade secrets will be Qualcomm's current and future competitors and customers, seeking an information windfall that will strengthen their own relative competitive or bargaining position against Qualcomm. This is at a far remove from the "public interest in understanding the judicial process" that underpins the general presumption favoring accessibility of judicial records. Kamakana, 447 F.3d at 1179.

Because it is difficult to identify any genuine public interest in Qualcomm's confidential information that outweighs Qualcomm's interest in maintaining the confidentiality of its trade secrets, Qualcomm respectfully requests that the Court enter an order sealing any portions of documents or testimony disclosing any term of the Samsung Agreements entered into evidence in these proceedings. In the alternative, if the Court concludes that reduction of terms of the Samsung Agreements from any

1	document entered into evidence in these proceedings is more appropriate, Qualcomm	
2	respectfully requests that—given that Qualcomm has not had actual access to the Teece	
3	Report— <sup>2</sup> the Court order that Qualcomm be granted access to any such document	
4	immediately, so that Qualcomm may propose specific redactions of Qualcomm	
5	confidential information.	
6	Dated: July 26, 2012	MORGAN, FRANICH, FREDKIN & MARSH
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10		By:/S/
11		DAVID A. KAYS
12		Attorneys for Non-Party QUALCOMM,
13		INCORPORATED.
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24	<sup>2</sup> We observe that the only direct kr	nowledge Qualcomm possesses that terms of the
25	Samsung Agreements may be entered into evidence in these proceedings is a letter from counsel for Samsung dated July 21, 2012 (Reif. Decl. Ex. 1) and that we have no knowledge of the contents of the Teece Report other than the text of Exhibits 3A & 3B o	
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27	that Report attached to that letter. (Reif	. Dec. ¶ 1 II.1.)
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