

1 DAVID A. KAYS, ESQ. (SBN 120798)
 FREEDA Y. LUGO, ESQ. (SBN 244913)
 2 MORGAN, FRANICH, FREDKIN & MARSH
 3 99 Almaden Boulevard, Suite 1000
 San Jose, California 95113-1613
 4 Telephone: (408) 288-8288
 Facsimile: (408) 288-8325
 5 ATTORNEYS FOR NON-PARTY
 QUALCOMM INCORPORATED
 6

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

11
 12 APPLE INC., a California corporation,
 13 Plaintiff,
 14 v.
 15 SAMSUNG ELECTRONICS CO., LTD., a
 16 Korean corporation; SAMSUNG
 17 ELECTRONICS AMERICA, INC., a New
 York corporation; and SAMSUNG
 18 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 19 Defendants.
 20

Case No. 11-cv-01846-LHK

**NON-PARTY QUALCOMM
 INCORPORATED'S
 ADMINISTRATIVE MOTION
 TO SEAL CONFIDENTIAL
 INFORMATION PURSUANT TO
 CIVIL L. R. 7-11 & 79-5**

21
 22
 23
 24
 25
 26
 27
 28

1 Pursuant to Civil L. R. 7-11 & 79-5, Non-Party Qualcomm Incorporated
2 (“Qualcomm”) moves to seal:

3 § those portions of Exhibits 3A and 3B to the Expert Report of
4 David Teece dated March 22, 2012 (the “Teece Report”)
5 designated as a potential trial exhibit by Defendants Samsung
6 Electronics Co. *et al.* in Trial Exhibit 630 that disclose terms of the
7 Samsung Agreements (as defined below);

8 § any text of any Samsung Agreement also included in or attached to
9 the Teece Report;

10 § any other document or testimony entered into evidence by either
11 party to the above-captioned action that discloses the terms of the
12 following agreements between Qualcomm and Samsung
13 Electronics Co. Ltd. (“Samsung”) (collectively the “Samsung
14 Agreements”):

- 15 • the Infrastructure and Subscriber Unit License Agreement
- 16 dated August 31, 1993 and subsequent amendments
- 17 thereto¹;
- 18 • the Side Agreement dated August 31, 1993;
- 19 • the Strategic Agreement dated May 18, 1999; and
- 20 • the Patent Assignment dated November 27, 2009.

21 Neither Plaintiff Apple, Inc. nor Defendants Samsung *et al.* oppose
22 Qualcomm’s motion. Filed in support of this motion is the declaration of Eric
23 Reifschneider, Senior Vice President and General Manager of Qualcomm Technology
24 Licensing (“Reif. Decl.”).

25 _____
26 ¹ Agreements amending the Infrastructure and Subscriber Unit License Agreement
27 dated August 31, 1993 have been entered by the parties effective November 17, 1997;
28 March 29, 2004; December 26, 2005; October 29, 2007; and January 1, 2009.

1 courts in this Circuit have accordingly permitted license agreements to be filed under seal
2 in their entirety. *See Triquint Semiconductor, Inc. v. Avago Tech. Ltd.*, No. 09-CV-1531-
3 JAT, 2011 WL 4947343, at *2 (D. Ariz. Oct. 18, 2011) (granting a motion to seal draft
4 license agreements because the “kind of information in a licensing agreement constitutes
5 a trade secret that could harm a litigant’s competitive standing”).

6 Qualcomm’s motion to seal the contents of the Samsung Agreements falls
7 squarely within the holdings of these cases.

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

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

- 23 • unique “financial terms disclos[ing] the careful balancing of past,
24 current, and future value exchanged in the Qualcomm-Samsung
25 relationship” (Reif. Decl. ¶ 6);
- 26 • the terms under which Qualcomm received rights to practice
27 Samsung’s patents (Reif. Decl. ¶ 7);

