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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
 Korean corporation; SAMSUNG ELECTRONICS
 16 AMERICA, INC., a New York corporation; and
 17 SAMSUNG TELECOMMUNICATIONS
 AMERICA, LLC, a Delaware limited liability
 18 company,

19 Defendants.
 20

Case No. 11-cv-01846-LHK

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

Judge: Hon. Lucy H. Koh

21 I, ERIC REIFSCHNEIDER, DECLARE:

22 1. I am the Senior Vice President and General Manager of Qualcomm
 23 Technology Licensing ("QTL"), a division of Qualcomm Incorporated ("Qualcomm").

24 I submit this declaration in support of Qualcomm's motion to seal:

25 § those portions of Exhibits 3A and 3B to the Expert Report of David Teece
 26 dated March 22, 2012¹ (the "Teece Report") designated as potential trial
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28 ¹ Qualcomm does not have access to the Teece Report, and Qualcomm's only information about the proposed trial exhibits is what has been disclosed by counsel for Defendants Samsung *et al.* in a letter dated July 21, 2012, a Case No.: 11-CV-01846-LHK

1 exhibits by Defendants Samsung Electronics Co. *et al.* in Trial Exhibit 630
2 that disclose terms of the Samsung Agreements (as defined below);

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

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

- 9 • the Infrastructure and Subscriber Unit License Agreement dated
10 August 31, 1993 and subsequent amendments thereto²;
- 11 • the Side Agreement dated August 31, 1993;
- 12 • the Strategic Agreement dated May 18, 1999; and
- 13 • the Patent Assignment dated November 27, 2009.

14 2. The Samsung Agreements have been negotiated and entered into over a
15 period of nearly two decades and disclose in minute detail the complex terms of the heavily
16 negotiated licensing and commercial relationship between Samsung and Qualcomm. As is true
17 of the license terms between Qualcomm and almost all its licensees, the terms of the Samsung
18 Agreements are subject to strict confidentiality obligations binding upon both parties *because* the
19 parties view these terms—which include financial terms as well as terms concerning other
20 consideration, the nature and scope of rights granted, the length of the term, assignability,
21 grounds for termination, and more—as trade secrets, the disclosure of which could place them at
22 a disadvantage in their relations with competitors or other licensees or licensors.

23 3. Indeed the specific terms of Qualcomm’s many patent licensing
24 agreements are consistently considered to be, and carefully guarded as, highly valuable trade

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26 copy of which is attached as Exhibit 1 to this Declaration. Thus, Qualcomm cannot be more specific in identifying
potential disclosure of its confidential information in that Report.

27 ² Agreements amending the Infrastructure and Subscriber Unit License Agreement dated August 31, 1993 have
28 been entered by the parties effective November 17, 1997; March 29, 2004; December 26, 2005; October 29, 2007;
and January 1, 2009.

1 secrets. Qualcomm takes care that essentially all its license agreements contain strict
2 confidentiality clauses and does not disclose the details of individual license agreements.

3 4. Certain high level information concerning the Samsung Agreements is in
4 the public record, as a result of disclosures required by SEC regulations, or by agreement
5 between Qualcomm and Samsung. In particular, certain up-front fees, pass through rights, and
6 the valuation of certain patents relating to the Samsung Agreements are on the public record.
7 However, most terms of the Samsung Agreements, including most of those apparently referenced
8 in the Teece Report, have remained confidential up to the present, and by the terms of the
9 Samsung Agreements both Qualcomm and Samsung are obliged to keep those terms
10 confidential.

11 5. For the reasons that follow, it would be seriously damaging to Qualcomm
12 if the highly sensitive, confidential business information contained in the Samsung Agreements
13 were disclosed to third parties through use in court in the absence of an appropriate sealing order.

14 6. *First*, the Samsung Agreements contain highly confidential and sensitive
15 financial terms unique to Qualcomm and Samsung and painstakingly negotiated over the course
16 of a long-term commercial relationship, including royalty rates, royalty bases, royalty caps, and
17 other financial terms. These financial terms disclose the careful balancing of past, current, and
18 future value exchanged in the Qualcomm-Samsung relationship. It would impede the ability of
19 Qualcomm to compete in the future in its markets if its competitors and current and potential
20 customers had such detailed knowledge of these terms. Such disclosure would also make it more
21 difficult to negotiate other sensitive and complex agreements with Samsung and with other
22 parties in the future, as Qualcomm and its counterparties would have to weigh the increased risk
23 that terms would become public as a result of third-party litigation, despite the confidentiality
24 guarantees that the parties to any such agreement might make.

25 7. *Second*, the Samsung Agreements contain unique and painstakingly
26 negotiated provisions under which Qualcomm receives rights to practice Samsung's patents. It
27 would impede the ability of Qualcomm to compete in the future in its markets and to negotiate
28

