

EXHIBIT 1

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July 21, 2012

VIA E-MAIL & U.S. MAIL

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Re: Notice of Disclosure of Confidential Documents

Dear Mr. Scott:

My firm represents Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC, in several litigations with Apple Inc., involving claims of patent infringement. One action is pending in the United States District Court for the Northern District of California denominated Apple Inc. v. Samsung Electronics Co., Ltd., et.al, Case No. 5:11-cv-01846-LHK. Trial will start on July 29, 2012, and we are in the process of designating trial exhibits.

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We are writing to inform you that Samsung has designated as potential trial exhibits documents that contain your company's confidential business information. A list of the documents is attached as Appendix A. Pursuant to a recently issued court order, the Court will not allow Samsung to seal any such documents unless "compelling reasons" are shown, to warrant secrecy. (See the attached July 17, 2012 and July 20, 2012 Orders.) The Court made clear that a showing of "good cause" would not be sufficient for sealing and provided the following guidance regarding what specific factual findings might constitute "compelling reasons":

[W]here a party seeks to file under seal documents attached to a dispositive motion, the strong presumption of public access can be overcome only by an "articulat[ion of] compelling reasons supported by specific factual findings," and the Court must "conscientiously balance[] the competing interests' of the public and the party who seeks to keep certain judicial records secret." "A 'good cause' showing will not, without more, satisfy a 'compelling reasons' test." The Ninth Circuit has explained that "compelling reasons" that justify sealing court records generally exist "when such 'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets."

July 20, 2012 Order Denying Motions to Seal and Remove Incorrectly Filed Documents, at 2 (internal citations omitted).

Samsung has not identified any compelling reasons, under that standard, to warrant a request for sealing of these documents. To the extent that your company believes it can make such a showing, and if you want to try to obtain a court order to seal the information in these documents, we recommend that you consider filing a motion to intervene as a third party and then a motion to seal. Otherwise, the documents and information identified in Appendix A will be available to the public as a result of the upcoming trial. Please let us know if you have any questions.

Sincerely,



Melissa Dalziel

Enclosures

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APPENDIX A

QUALCOMM

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 Qualcomm:

Exhibit 3A Summary of Samsung License Agreements

Licensor	Title	Effective Date	Date Last Signed	Term	Licensed Products/Technology	Geographic Scope	Payments	Source
Samsung Electronics Co Ltd	Amendment to Infrastructure and Subscriber Unit License and Technical Assistance Agreement	12/26/2005	12/26/2005	N/A	N/A	N/A	Samsung to pay Qualcomm \$4,501,731 for partial consideration of the modification to the License Agreement as set forth in the Amendment	SAMNDCA00052166 to SAMNDCA00052169
Samsung Electronics Co Ltd	Amendment to Infrastructure and Subscriber Unit License and Technical Assistance Agreement	1/1/2009	11/4/2009	12/31/2023	Royalty-Bearing Subscriber Units means (i) all Subscriber Units that are Telephones; (ii) all Subscriber Units that are Laptop Computer Subscriber Units not covered by clause (i) above, and (iii) any type of Subscriber Unit the has been or is introduced (e g , marketed, offered for sale or Sold) by Samsung no later than 6 months following the execution of this Agreement and not covered under clauses (i) and (ii) above Does not include GSM-only Subscriber Units Royalty Bearing Modem cards	Worldwide	Samsung to pay Qualcomm \$1,300 MM lump sum payment (in installments) for Royalty-Bearing Subscriber Units Royalty rate for Royalty Bearing Subscriber Units and Modem Cards dependent on various terms and conditions and range from 2.35% to 6.5% of the net selling price Royalty rate for CDMA Femtocells range between 0.75% to 5% of the net selling price depending on units sold Most Favored Royalty Rate for	SAMNDCA00052029 to SAMNDCA00052115

Licensee	Licensor	Title	Effective Date	Date Last Signed	Term	Licensed Products/Technology	Geographic Scope	Payments	Source
						<p>means all Modem Cards other than GSM-only Modem Cards</p> <p>CDMA Femtocell meanS.A. Femtocell that is used to connect to a wireless network that operates utilizing one or more CDMA Standards</p>		Royalty-Bearing Subscriber Units	
Samsung Electronics Co Ltd	Qualcomm Inc	Infrastructure and Subscriber Unit License and Technical Assistance Agreement	8/31/1993	9/3/1993	Continuous	<p>Subscriber Unit, Cordless Base Station, Components, and Infrastructure Equipment solely for use in Wireless Applications</p> <p>Wireless Applications are CDMA-based Digital Cellular Systems, Personal Communications Systems, Wireless PABX Systems, commercial telemetry for information gathering, commercial security system for alarming applications, RF LAN applications, Cordless Telephone applications and any other CDMA wireless applications currently licensee by Qualcomm to its existing CDMA Subscriber Unit and Infrastructure licensees as of the Effective Date of the Agreement</p>	Worldwide	<p>Cross-License</p> <p>Samsung to pay Qualcomm an up-front license fee of \$8 5MM (in installments) Samsung als</p> <p>agrees to pay Qualcomm \$1 322 MM for certain deliverables that ETRI elected to receive under the terms of the Joint Development Agreement</p> <p>Samsung to pay Qualcomm a royalty rate for Subscriber Units of 5 75% of net selling price for outside Korea and 5 25% of net selling price within Korea If for the two year period commencing immediately after the first date of commercial shipment of Samsung's Subscriber Units or until January 1, 1997, whichever is earlier, if the royalty payable by Samsung to Qualcomm is greater than \$35 for each digital cellular Subscriber Unit, then Samsung shall pay only \$35</p> <p>Samsung to pay Qualcomm a royalty rate for Cordless Base Stations of 5.75% of net selling price for outside Korea and 5 25% of net selling price within Korea</p> <p>Samsung to pay Qualcomm a royalty rate for Infrastructure</p>	SAMNDCA00052124 to SAMNDCA00052161

Licensee	Licensor	Title	Effective Date	Date Last Signed	Term	Licensed Products/Technology	Geographic Scope	Payments	Source
								<p>Equipment of 5% of net selling price for units purchased by Samsung from Qualcomm, 6.5% of net selling price for outside Korea and 6% of net selling price within Korea</p> <p>Following the 15th anniversary' the license will be considered fully paid up, and no further royalties will be due from Samsung</p> <p>Most Favored Up-Front License Fee and Most Favored Royalty Rate</p>	
Samsung Electronics Co Ltd	Qualcomm Inc	Amendment to Infrastructure and Subscriber Unit License and Technical Assistance Agreement	3/29/2004	3/29/2004	2 years from Effective Date with an option to renew	Eligible Subscriber Unit iS.A. Qualifying Subscriber Unit (defined asS.A. Subscriber Unit (including but not limited to a Subscriber Unit implementing CDMA technology in compliance with the IS-standards) that 95, cdma2000, WCDMA and/or UMTS incorporateS.A. CDMA ASIC) that is for use in in the Rest of the World (i c , not in Korea)	Worldwide	<p>Samsung to pay Qualcomm a royalty rate for Eligible Subscriber Unit beginning April 1, 200, of 5% of net selling price</p> <p>For Non-Eligible Subscriber Units the royalties arc the same as set forth in the License Agreement</p> <p>Maximum royalty to be paid for each Qualifying Subscriber Unit beginning April 1, 2004 shall be \$20</p> <p>Qualcomm asserts (with the exception of certain third party licenses noted in the agreement) that no other third party has mom favorable terms than those outlined in the Amendment</p>	SAMNDCA00052116 to SAMNDCA00052123
Samsung Electronics Co Ltd.	Qualcomm Inc	Amendment to Infrastructure and Subscriber Unit License and	11/17/1997	11/17/1997	N/A	Subscriber Unit, Cordless Base Station, Components, and Infrastructure Equipment	N/A	<p>Samsung to pay Qualcomm \$750,000 as partial consideration for the modifications to the License Agreement</p> <p>Following the 13th anniversary of the Effective Date of this</p>	SAMNDCA00052164 to SAMNDCA00052165

Licensee	Licensor	Title	Effective Date	Date Last Signed	Term	Licensed Products/Technology	Geographic Scope	Payments	Source
		Technical Assistance. Agreement						Amendment for Subscriber Units, Cordless Base Stations and Reportable Infrastructure Products Sold by Samsung for use solely in Korea and following the 15th anniversary of the Effective Date of this Amendment for all other Subscriber Units, Cordless Base Stations and Reportable Infrastructure Products sold by Samsung, the license to Samsung under Qualcomm's New IP shall be fully paid up	

1 Historically, courts have recognized a “general right to inspect and copy public records and
2 documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S.
3 589, 597 & n. 7 (1978). Unless a particular court record is one “traditionally kept secret,” a “strong
4 presumption in favor of access” is the starting point. *Foltz v. State Farm Mutual Auto. Insurance*
5 *Company*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to seal a judicial record then bears
6 the burden of overcoming this strong presumption by meeting the “compelling reasons” standard.
7 *Id.* at 1135. That is, the party must “articulate[] compelling reasons supported by specific factual
8 findings,” *id.* (citing *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1102-03 (9th
9 Cir.1999)), that outweigh the general history of access and the public policies favoring disclosure,
10 such as the “ ‘public interest in understanding the judicial process.’ ” *Hagestad*, 49 F.3d at 1434
11 (quoting *EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th Cir. 1990)).

12 The Ninth Circuit has explained that the “strong presumption of access to judicial records
13 applies fully to dispositive pleadings, including motions for summary judgment and related
14 attachments” because “the resolution of a dispute on the merits, whether by trial or summary
15 judgment, is at the heart of the interest in ensuring the “public’s understanding of the judicial
16 process and of significant public events.” *Kamakana v. City and County of Honolulu*, 447 F.3d
17 1172, 1177 (9th Cir. 2006). The Ninth Circuit has also carved out an exception to the strong
18 presumption of openness for pre-trial, non-dispositive motions. The Ninth Circuit applies a “good
19 cause” showing to keep sealed records attached to non-dispositive motions. *Id.* at 1180. Thus the
20 Court applies a two tiered approach: “judicial records attached to dispositive motions [are treated]
21 differently from records attached to non-dispositive motions. Those who seek to maintain the
22 secrecy of documents attached to dispositive motions must meet the high threshold of showing that
23 ‘compelling reasons’ support secrecy” while a showing of good cause will suffice at earlier stages
24 of litigation. *Id.*

25 As Judge Alsup explained in *Oracle America v. Google, Inc.*, 10-CV-03561-WHA, at ECF
26 No. 540, “The United States district court is a public institution, and the workings of litigation must
27 be open to public view. Pretrial submissions are a part of trial.” Accordingly, Judge Alsup advised
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counsel that “unless they identify a limited amount of exceptionally sensitive information that truly deserves protection, the motions will be denied outright.” *Id.*

Similarly, this Court explained at the June 29, 2012 case management conference that “the whole trial is going to be open.” Hr’g Tr. at 78. In light of the Ninth Circuit’s admonition in *Kamakana* regarding the presumption of openness and the high burden placed on sealing documents at this late, merits stage of the litigation, it appears that the parties have overdesignated confidential documents and are seeking to seal information that is not truly sealable under the “compelling reasons” standard. As one example, the parties have sought to redact descriptions of trial exhibits that will presumably be used in open court. *See, e.g.* Exhibit A to Samsung’s Objections to Apple’s Exhibit List. Accordingly, the Sealing Motions are DENIED without prejudice.

The parties may file renewed motions to seal within one week of the date of this Order. However, the parties are ORDERED to carefully scrutinize the documents it seeks to seal. At this stage of the proceedings, the presumption of openness will apply to all documents and only documents of exceptionally sensitive information that truly deserve protection will be allowed to be redacted or kept from the public. Nearly all of the documents which met the lower, “good cause” standard do not meet the higher, “compelling reasons” standard for trial.

IT IS SO ORDERED.

Dated: July 17, 2012



LUCY H. KOH
United States District Judge

1 331 F.3d 1122, 1135 (9th Cir. 2003)). Where a party seeks to file under seal documents attached
2 only to a non-dispositive motion, however, a showing of “good cause” often outweighs the public’s
3 interest in access, because “the public has less of a need for access to court records attached only to
4 non-dispositive motions because those documents are often unrelated, or only tangentially related,
5 to the underlying cause of action.” *Id.* at 1179 (internal quotation marks and citations omitted).

6 By contrast, where a party seeks to file under seal documents attached to a dispositive
7 motion, the strong presumption of public access can be overcome only by an “articulat[ion of]
8 compelling reasons supported by specific factual findings,” and the Court must “conscientiously
9 balance[] the competing interests’ of the public and the party who seeks to keep certain judicial
10 records secret.” *Id.* at 1178-79 (quoting *Foltz*, 331 F.3d at 1135). “A ‘good cause’ showing will
11 not, without more, satisfy a ‘compelling reasons’ test.” *Id.* at 1180. The Ninth Circuit has
12 explained that “compelling reasons” that justify sealing court records generally exist “when such
13 ‘court files might have become a vehicle for improper purposes,’ such as the use of records to
14 gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.”
15 *Id.* at 1179 (quoting *Nixon*, 435 U.S. at 598). “The mere fact that the production of records may
16 lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without
17 more, compel the court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136). “Unlike private
18 materials unearthed during discovery, judicial records are public documents almost by definition,
19 and the public is entitled to access by default. This fact sharply tips the balance in favor of
20 production when a document, formerly sealed for good cause under Rule 26(c), becomes part of a
21 judicial record.” *Id.* at 1180 (internal citation omitted).

22 The pending Motions to Seal relate to the preliminary injunction, Samsung’s motion to stay
23 the preliminary injunction, or the potential evidence at trial. Although the preliminary injunction
24 and Samsung’s motion to stay are non-dispositive, they cannot fairly be characterized as
25 “unrelated, or only tangentially related, to the underlying cause of action.” *Kamakana*, 447 F.3d. at
26 1179. To the contrary, these motions implicate the very core of Apple’s claims and Apple’s
27 desired relief in bringing suit against Samsung. As evidenced by the plethora of media and general
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1 public scrutiny of the preliminary injunction proceedings, the public has a significant interest in
2 these court filings, and therefore the strong presumption of public access applies.

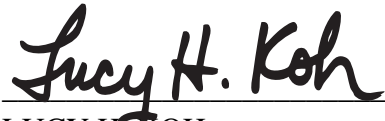
3 Regarding the motion to seal potential evidence at trial, the Court has made clear to the
4 parties that all evidence introduced at trial will be open to the public, with the narrow exception of
5 “exceptionally sensitive information that truly deserves protection.” Order at 2, ECF No. 1256
6 (citing *Oracle Am. v. Google, Inc.*, No. 10-CV-03561-WHA, at ECF No. 540). With a July 30,
7 2012 trial date, this case has reached a stage of the proceedings where “the presumption of
8 openness will apply to all documents[,] and only documents of exceptionally sensitive information
9 that truly deserve protection will be allowed to be redacted or kept from the public.” ECF No.
10 1256 at 3.

11 Therefore, the Court now determines that the strong public interest in the proceedings in
12 this case merits imposition of the heightened “compelling reasons” standard on the pending
13 Motions to Seal that governs the sealing of documents attached to dispositive motions or evidence
14 submitted in trial. *See Kamakana*, 447 F.3d at 1178-79.

15 The Court has reviewed the Motions to Seal. While some of the information may have
16 been sealable under the more pliant “good cause” standard, much of it failed to meet even that
17 lower burden. For example, some of the information sought to be sealed includes names of
18 document custodians, descriptions of features of devices, and photographs of items that are in the
19 public record. Moreover, none of the information sought to be sealed satisfies the more stringent
20 “compelling reasons” standard. In light of these findings, the Court DENIES the pending
21 administrative motions to seal and to remove incorrectly filed documents.

22 **IT IS SO ORDERED.**

23 Dated: July 20, 2012



LUCY H. KOH
United States District Judge

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