

1 DAVID S. BLOCH (SBN: 184530)
dbloch@winston.com
2 JENNIFER A. GOLINVEAUX (SBN: 203056)
jgolinveaux@winston.com
3 MARCUS T. HALL (SBN: 206495)
mthall@winston.com
4 WINSTON & STRAWN LLP
101 California Street
5 San Francisco, CA 94111-5894
Telephone: (415) 591-1000
6 Facsimile: (415) 591-1400

7 Attorneys for Non-Party,
8 MOTOROLA MOBILITY LLC
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 APPLE, INC., a California Corporation,)
14)
Plaintiff,)
15)
v.)
16)
SAMSUNG ELECTRONICS CO., LTD., a)
17 Korean corporation; SAMSUNG)
ELECTRONICS AMERICA, INC., a New York)
18 corporation; SAMSUNG)
TELECOMMUNICATIONS AMERICA, LLC, a)
19 Delaware limited liability company,)
20 Defendants.)
21)
22)
23)

CASE NO.: 11-CV-01846-LHK

**DECLARATION OF
THOMAS V. MILLER**

24 **DECLARATION OF THOMAS V. MILLER**

25 I, Thomas V. Miller, declare and state:

26 1. I am an employee of Motorola Mobility LLC, formerly known as Motorola
27 Mobility, Inc., and previously the Mobile Devices and Home business segments of Motorola,
28

Apple Inc. v. Samsung Electronics Co. Ltd. et al

1 Inc. ("Motorola"). As Vice President, Intellectual Property for Motorola, my responsibilities
2 include patent litigation and licensing of patents. As such, I am familiar with Motorola's
3 intellectual property licenses, Motorola's licensing practices, and its confidentiality
4 requirements. I am over the age of 18 and make this declaration based on my own personal
5 knowledge. If called and sworn as a witness, I could and would testify as set forth below.

6 2. Attached as Exhibit A to this declaration is a copy of a letter that I received via e-
7 mail on Sunday, July 22, 2012 from counsel for Samsung in the above-caption case ("the
8 Letter"). Appendix A to the Letter and the copy of Trial Exhibit 82 that was enclosed with the
9 Letter have been redacted to remove Motorola confidential information from them.

10 3. In the Letter and its Appendix A, Samsung's counsel provides notice that
11 Samsung has designated a number of documents as potential trial exhibits in the case that
12 contain Motorola highly confidential information. Specifically, Appendix A to the Letter
13 identifies the following: a) Trial Exhibit 77, which includes a summary of Samsung's licenses,
14 including a line entry for a license between Samsung and Motorola Inc.; b) Trial Exhibit 82, a
15 Samsung licensing presentation entitled "Samsung - Motorola Licensing Discussions," dated
16 May 2, 2005 (S-794-ITC-005280718-S-794-ITC-005280737); c) Trial Exhibit 630, which
17 Samsung indicates are Exhibits 3A and 3B to the Expert Report of David Teece and includes
18 line entries disclosing terms of license agreements between Samsung and Motorola, Inc.; and d)
19 Trial Exhibit 631, which Samsung indicates are Exhibits 4A-4B to the Teece report and contain
20 entries disclosing royalty rates between Motorola and Samsung. With regard to Trial Exhibits
21 77, 630, and 631, I have seen only the summaries of Motorola information provided in the
22 Letter from Samsung.

23 4. As indicated in the Letter and above, Motorola has been a party to licensing
24 agreements with Samsung. The Letter indicates that trial Exhibits 77, 630 and 631 disclose
25 highly confidential terms of those licensing agreements, including: monetary terms, including
26 license rates and direction of payments; and identification of licensed products and technologies.
27 Motorola considers this information to be highly confidential and extremely sensitive, for a
28 number of reasons including that Motorola is engaged in ongoing licensing negotiations with

1 several competitor companies, and the disclosure of this information to such companies or the
2 general public would be harmful to Motorola's licensing program.

3 5. I have reviewed Exhibit 82, which is a licensing presentation prepared by
4 Samsung. Pages 13-15, 17, and 19 of this document disclose the proposed terms and conditions
5 of a Samsung-Motorola license, forecasts of Motorola sales, and proposed royalty rates and
6 payments between Motorola and Samsung. For the same reasons that the information disclosed
7 in Exhibits 77, 630, and 631 are considered highly confidential and sensitive, Motorola
8 considers the contents of Exhibit 82, pages 13-15, 17, and 19 likewise to be highly confidential
9 and sensitive. Disclosure of that information to companies with whom Motorola is engaged in
10 licensing negotiations or to the general public would be harmful to Motorola's licensing
11 program.

12 I declare under the penalty of perjury under the laws of the State of Illinois and the
13 United States that the foregoing is true and correct. Executed this 26th day of July, 2012, in
14 Libertyville, Illinois.

15 

16 _____
17 Thomas V. Miller

EXHIBIT A

quinn emanuel trial lawyers | los angeles

865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL: (213) 443-3000 FAX: (213) 443-3100

WRITER'S DIRECT DIAL NO.
(213) 443-3110

WRITER'S INTERNET ADDRESS
melissadalziel@quinnemanuel.com

July 21, 2012

VIA FEDERAL EXPRESS

Vice President for Patents, Trademarks &
Licensing
Motorola, Inc.
1303 East Algonquin Road
Schaumburg, Illinois 60196

Re: Notice of Disclosure of Confidential Documents

To Whom It May Concern:

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.

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

quinn emanuel urquhart & sullivan, llp

NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL (212) 849-7000 FAX (212) 849-7100

SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111-4788 | TEL (415) 875-6600 FAX (415) 875-6700

SILICON VALLEY | 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139 | TEL (650) 801-5000 FAX (650) 801-5100

CHICAGO | 500 W. Madison Street, Suite 2450, Chicago, Illinois 60661-2510 | TEL (312) 705-7400 FAX (312) 705-7401

WASHINGTON, DC | 1299 Pennsylvania Avenue NW, Suite 825, Washington, District of Columbia 20004-2400 | TEL (202) 538-8000 FAX (202) 538-8100

LONDON | 16 Old Bailey, London EC4M 7EG, United Kingdom | TEL +44 20 7653 2000 FAX +44 20 7653 2100

TOKYO | NBF Hibiya Building, 25F, 1-1-7, Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan | TEL +81 3 5510 1711 FAX +81 3 5510 1712

MANNHEIM | Mollstraße 42, 68165 Mannheim, Germany | TEL +49 621 43298 6000 FAX +49 621 43298 6100

MOSCOW | Voentorg Building, 3rd Floor, 10 Vozdvizhenka Street, Moscow 125009, Russia | TEL +7 495 797 3666 FAX +7 495 797 3667

HAMBURG | An der Alster 3, 20099 Hamburg, Germany | TEL +49 40 89728 7000 FAX +49 40 89728 7100

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

02198.51855/4869250.1

APPENDIX A

MOTOROLA

Trial Exhibit 77: Summary of the key terms of various Samsung licenses with third parties, including Motorola. Trial Exhibit 77 contains the following information about your company:

Summary of Samsung Licenses						
Samsung License Partner	Bates Range	Effective Date	Expiration Date	Term of Agreement	Monetary Consideration	Includes Rights to UMTS-Related Patents? Includes Rights to Other Patents? Cross License?
Motorola, Inc. ("Motorola")	S-794-ITC-005216440-5216462	July 1, 2005	Dec. 31, 2010	5 years, 6 months	REDACTED	REDACTED REDACTED REDACTED

Trial Exhibit 82: Samsung presentation titled "Samsung - Motorola Licensing Discussions," dated May 2, 2005 (S-794-ITC-005280718-S-794-ITC-005280737). A copy of the document is attached.

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 Motorola:

Exhibit 3A
Summary of Samsung License Agreements

Licensee	Licensor	Title	Effective Date	Date Last Signed	Term	Licensed Products/Technology	Geographic Scope	Payments	Source
Samsung Electronics Co Ltd	Motorola, Inc	Cellular Cross License Agreement	9/30/2000	N/A	12/31/2004	REDACTED	Worldwide	REDACTED	S-794-ITC-005280285 to S-794-ITC-005280348
Samsung Electronics Co Ltd	Motorola, Inc	License Extension Agreement	6/30/2005	6/30/2005	6/30/2005	REDACTED	N/A	REDACTED	S-794-ITC-005280871 to S-794-ITC-005280874

Licensee	Licensor	Title	Effective Date	Date Last Signed	Term	Licensed Products/Technology	Geographic Scope	Payments	Source
Samsung Electronics Co Ltd	Motorola, Inc	Wireless Communication License Agreement	7/1/2005	9/25/2005	12/31/2010	REDACTED	Worldwide	REDACTED	S-794-ITC-005216440 to S-794-ITC-005216462

Trial Exhibit 631: Exhibits 4A-4B to the Teece Report. Exhibit 4A contains a table titled "Initial Royalty Rates" [REDACTED]
 [REDACTED] Exhibit 4B contains a table titled [REDACTED] Trial Exhibit 631 contains the following information about your company:

Exhibit 4A
 [REDACTED]
 Initial Royalty Rates -
 [REDACTED]

Exhibit 4B
 [REDACTED]

	[A]	[B]	[C]	[D]	[E]
License	Net Royalty	Total Revenues	Gross Royalty	Partner Rate (Input)	Samsung Rate (Implied)
	Partner	Partner	Partner	Upper	Flat
	Samsung	Samsung	Samsung	Lower	Flat
				Flat	Flat

[REDACTED]

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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United States District Court
For the Northern District of California

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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
28

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

SAMSUNG

PLAINTIFF'S EXHIBIT NO. 82

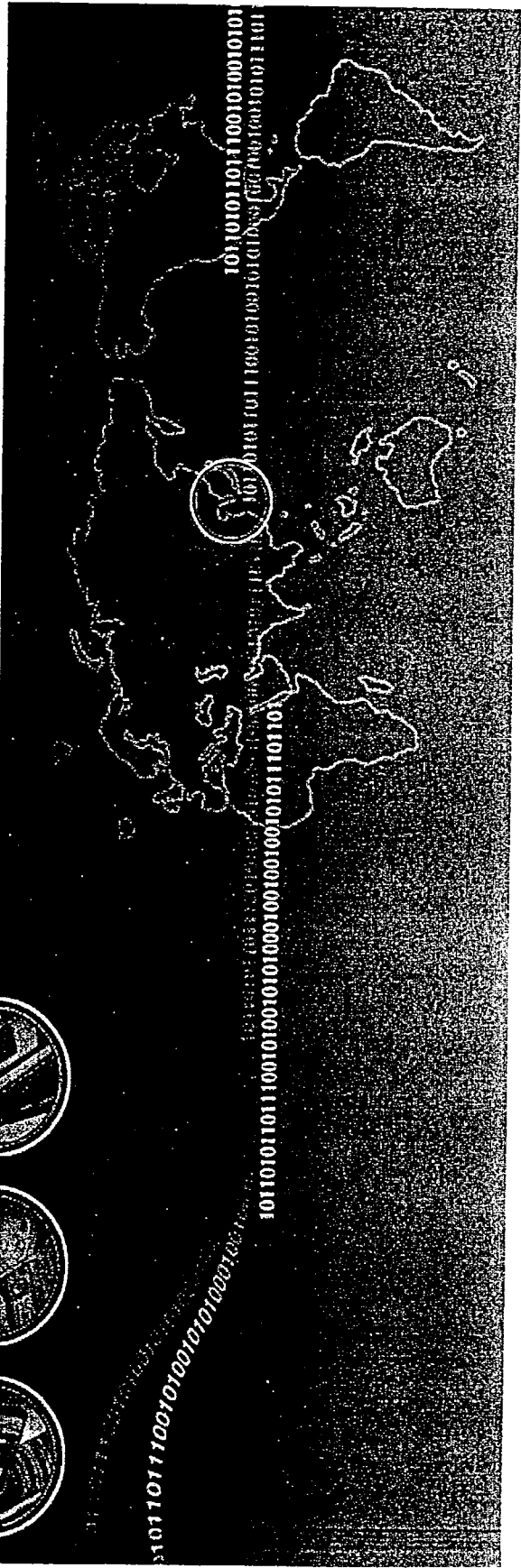
United States District Court
Northern District of California
No. 11-CV-01846-LHK (PSG)

Apple Inc. v. Samsung Elecs.

Date Admitted: _____ By: _____

Samsung – Motorola Licensing Discussions

May 2, 2005



Patent Position (GSM)

Section	Motorola		Samsung	
	Total(35)	To be Valued	Total	To be Valued
Discussed				
Mobile & Infra.	24	2	2	-
Mobile Only	4	-	-	-
Infra. Only	7	-	1	1
Not discussed	20	1~2(esp. mech)	-	-
Total	55	3~4	3	1

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Patent Position (3GPP)

Section	Motorola		Samsung	
	Total(22)	To be Valued	Total	To be Valued
Discussed	8	-	10	8
Mobile & Infra.	6	2	3	-
Mobile Only	8	-	4	-
Infra. Only	14	1~2(exclude)	-	-
Not discussed	36	3~4	17	8
Total				

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Patent Position (3GPP2)

Section	Motorola		Samsung	
	Total(33)	To be Valued	Total	To be Valued
Discussed				
Mobile & Infra.	5	2	14	5
Mobile Only	14	-	5	1
Infra. Only	14	1	7	2
Not discussed	10	1~2(expect)	-	-
Total	43	4~5	26	8

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Patent Position (Non - Essential)

Section	Motorola		Samsung	
	Total	To be Valued	Total	To be Valued
Discussed	35	4	42	7
Total				

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Patent Position (Summary)

Section	Motorola		Samsung	
	Total(125)	To be Valued	Total	To be Valued
Discussed				
GSM	35	2	3	1
3GPP	22	2	17	8
3GPP2	33	3	26	8
Non - Essen.	35	4	42	7
Not discussed	44	3~5 (exped)	-	-
Total	169	14~17	88	24

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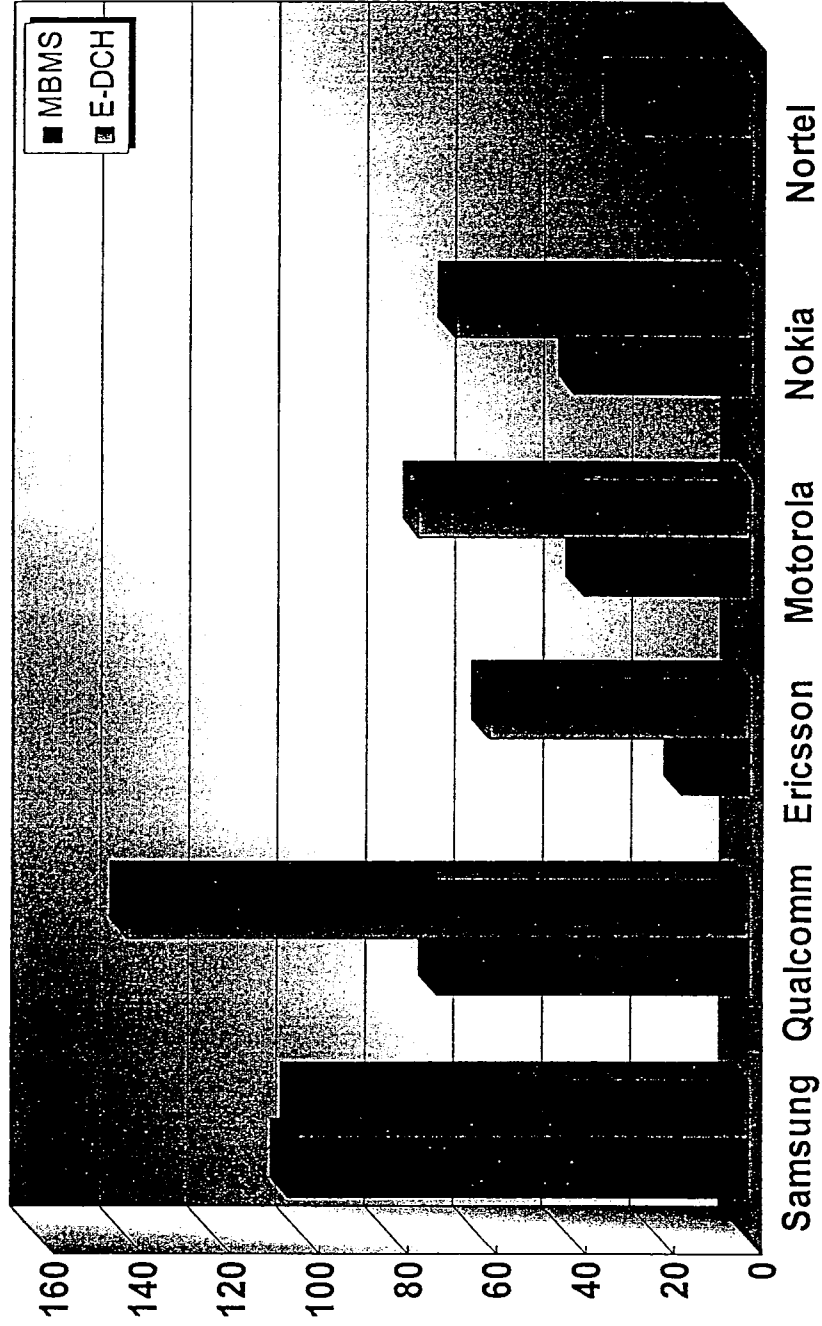
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Comparison of the Contributions for 3GPP (#1)

■ Year : 2004 / Technology : RAN 1 & RAN 2

*MBMS : Multimedia Broadcast Multicast Service
E-DCH : FDD Enhanced Uplink (DCH)



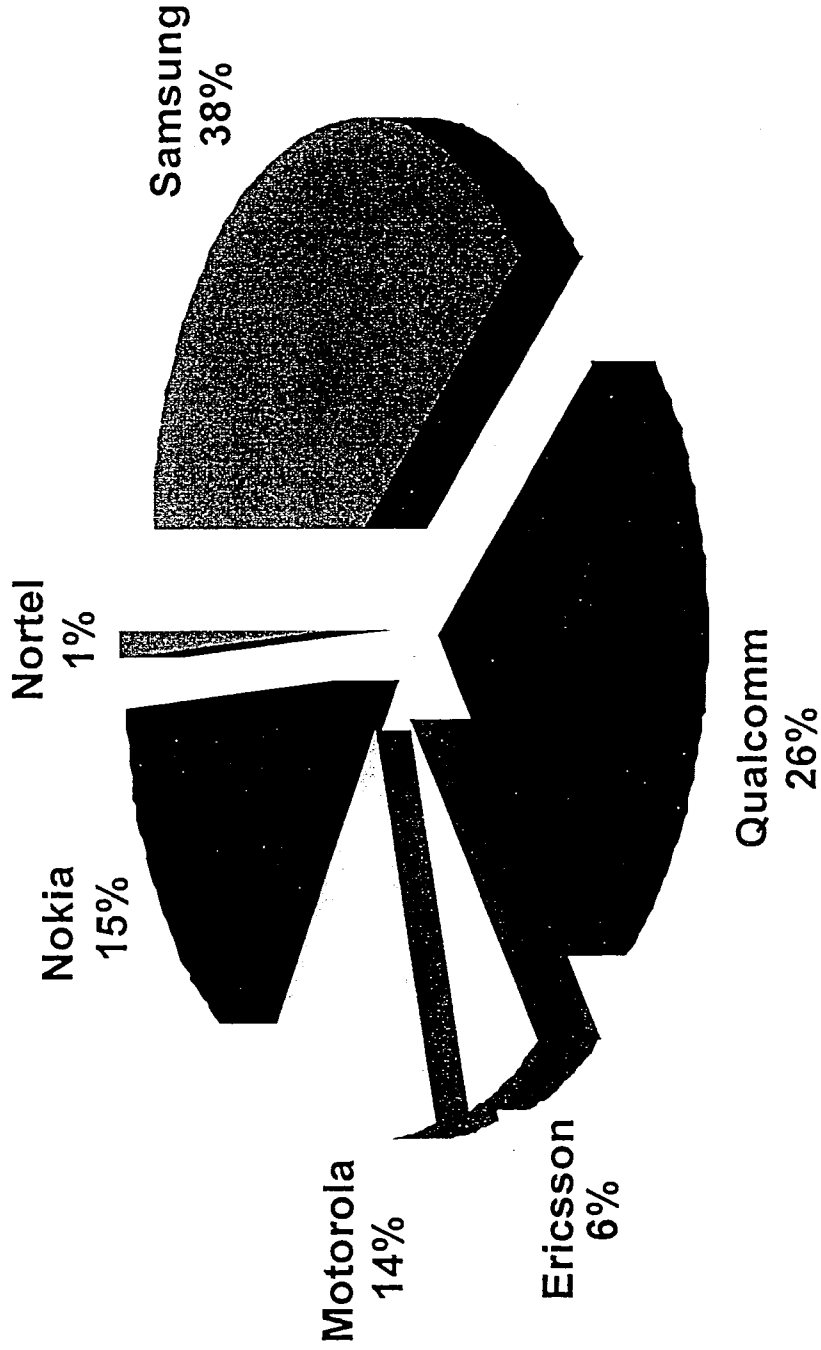
Source: 3GPP RAN WG1/WG2 Tdoc List

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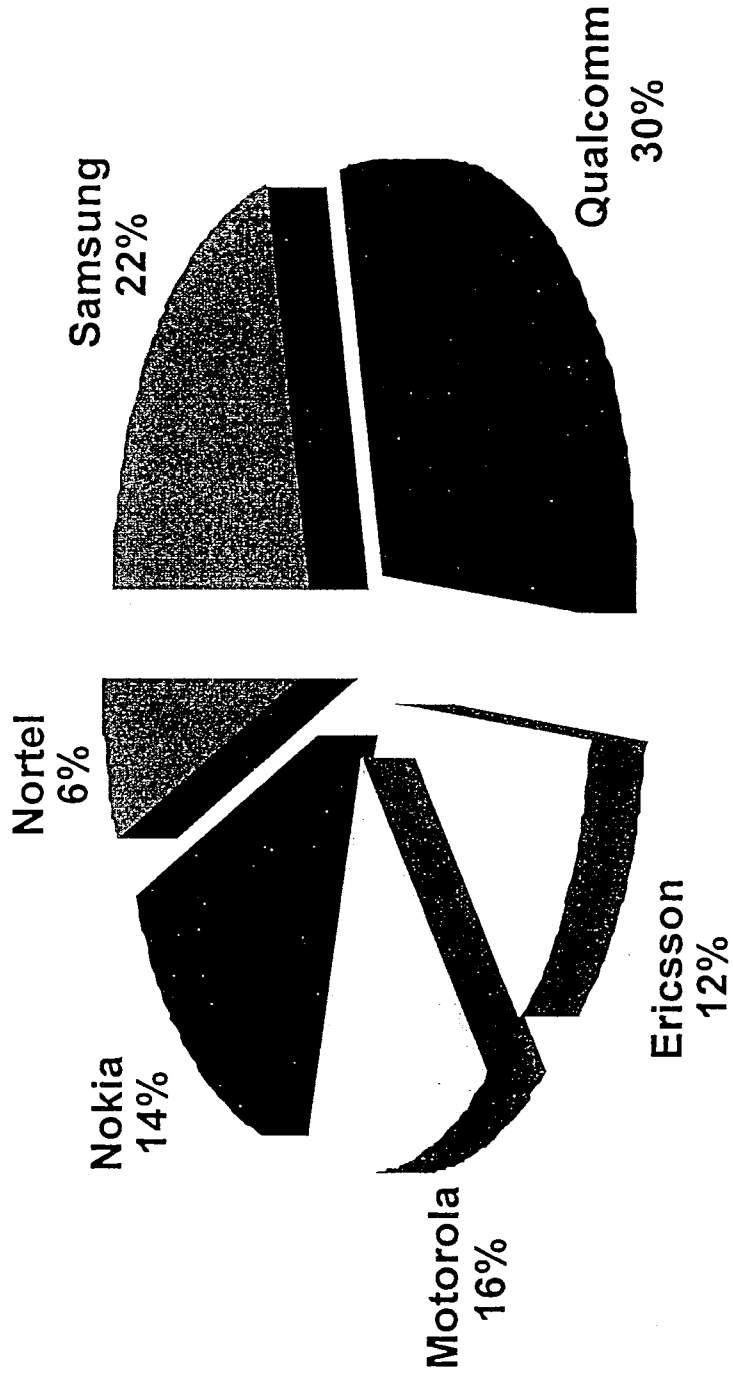
Comparison of the Contributions for 3GPP (#2)

■ MBMS (RAN 1 & RAN 2)

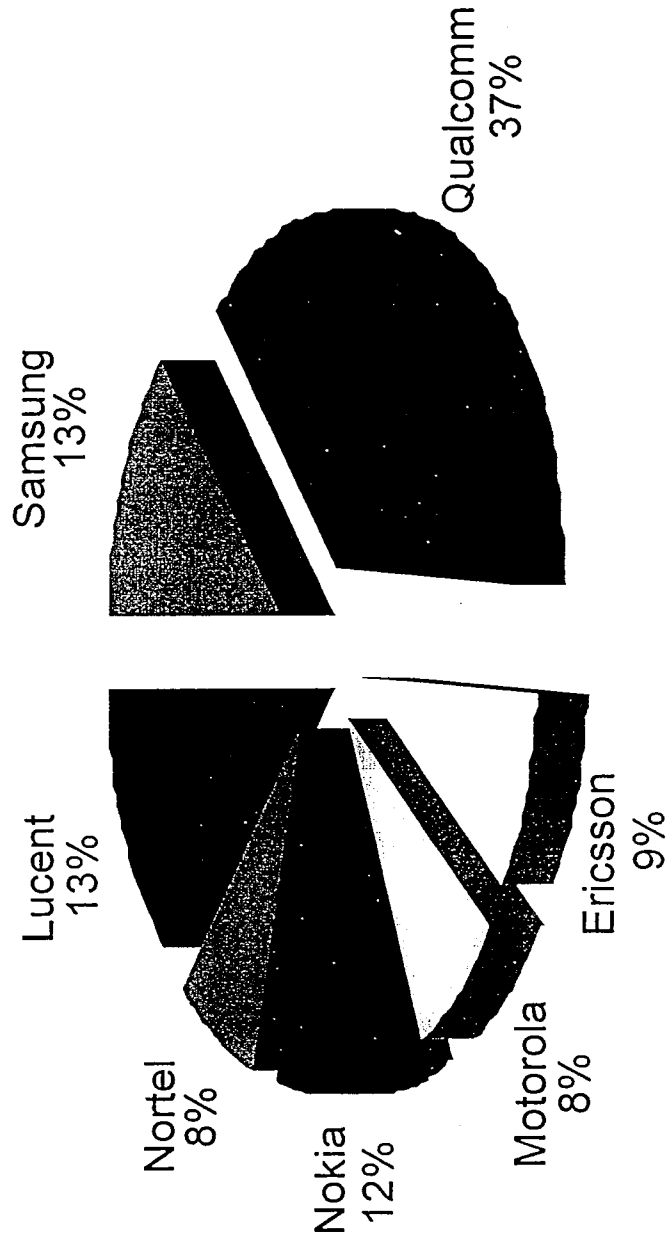


Comparison of the Contributions for 3GPP (#3)

■ E - DCH (RAN 1 & RAN 2)



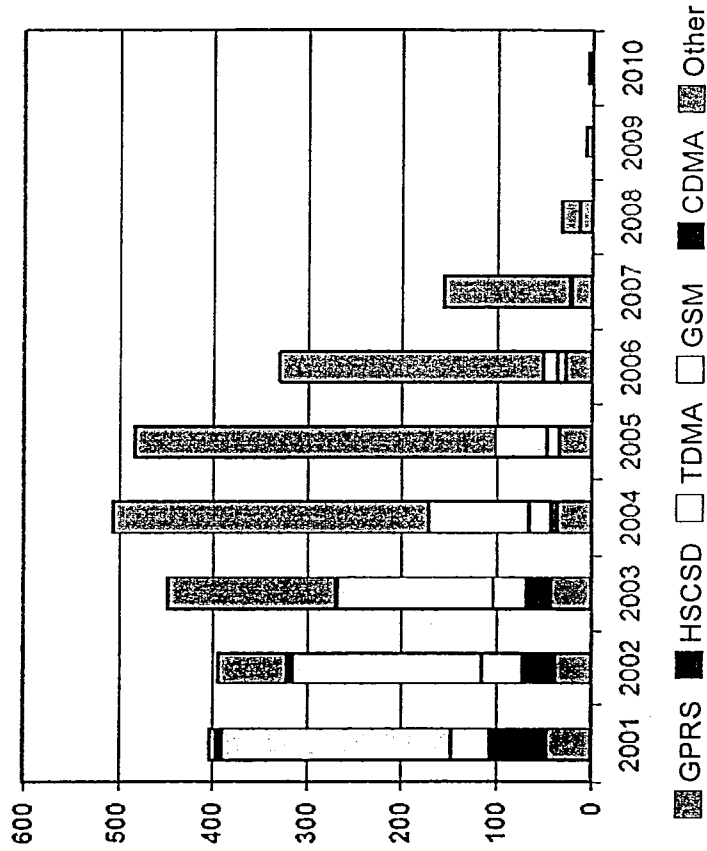
Comparison of the Contributions for 3GPP2 (Rev.D)



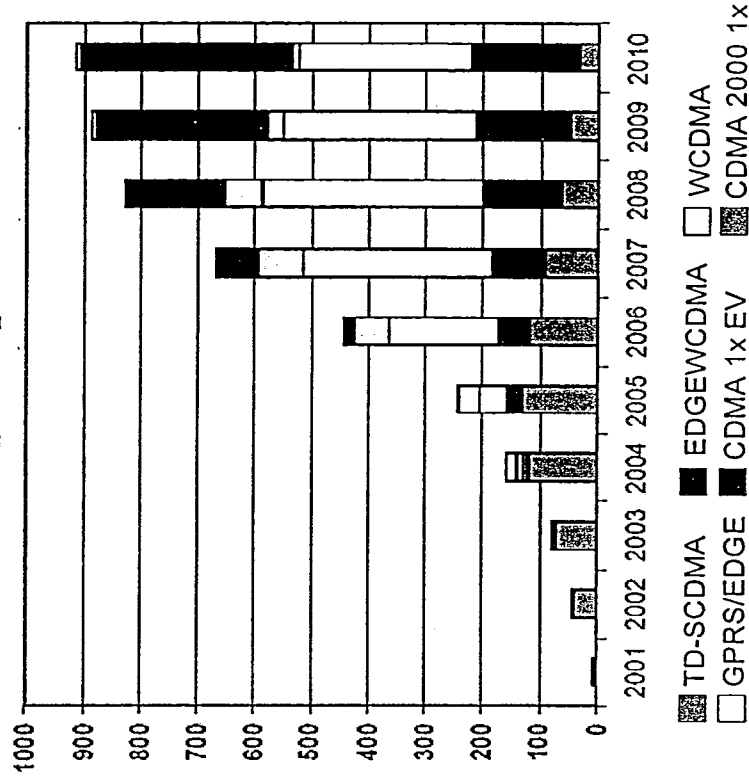
Mobile Subscriptions

Global Sales by Technology 2001 ~ 2010 (M units)

【 2G & 2.5G 】



【 3G 】



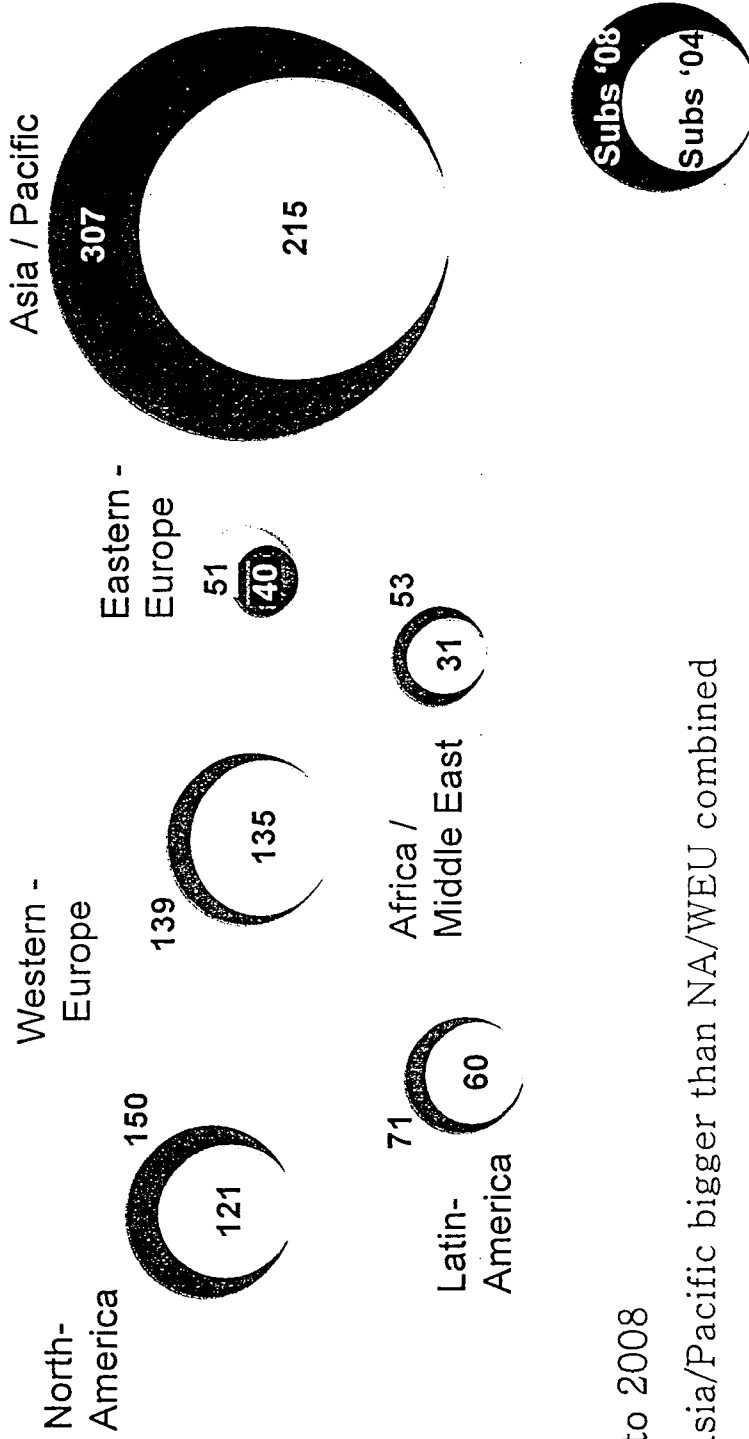
Source: Strategy Analytics (December 2004)

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Mobile Subscriptions

■ Year End 2004 vs. 2008 by Region (M units)



Up to 2008

1. Asia/Pacific bigger than NA/WEU combined
2. Developed markets growth slows down, compared to the past

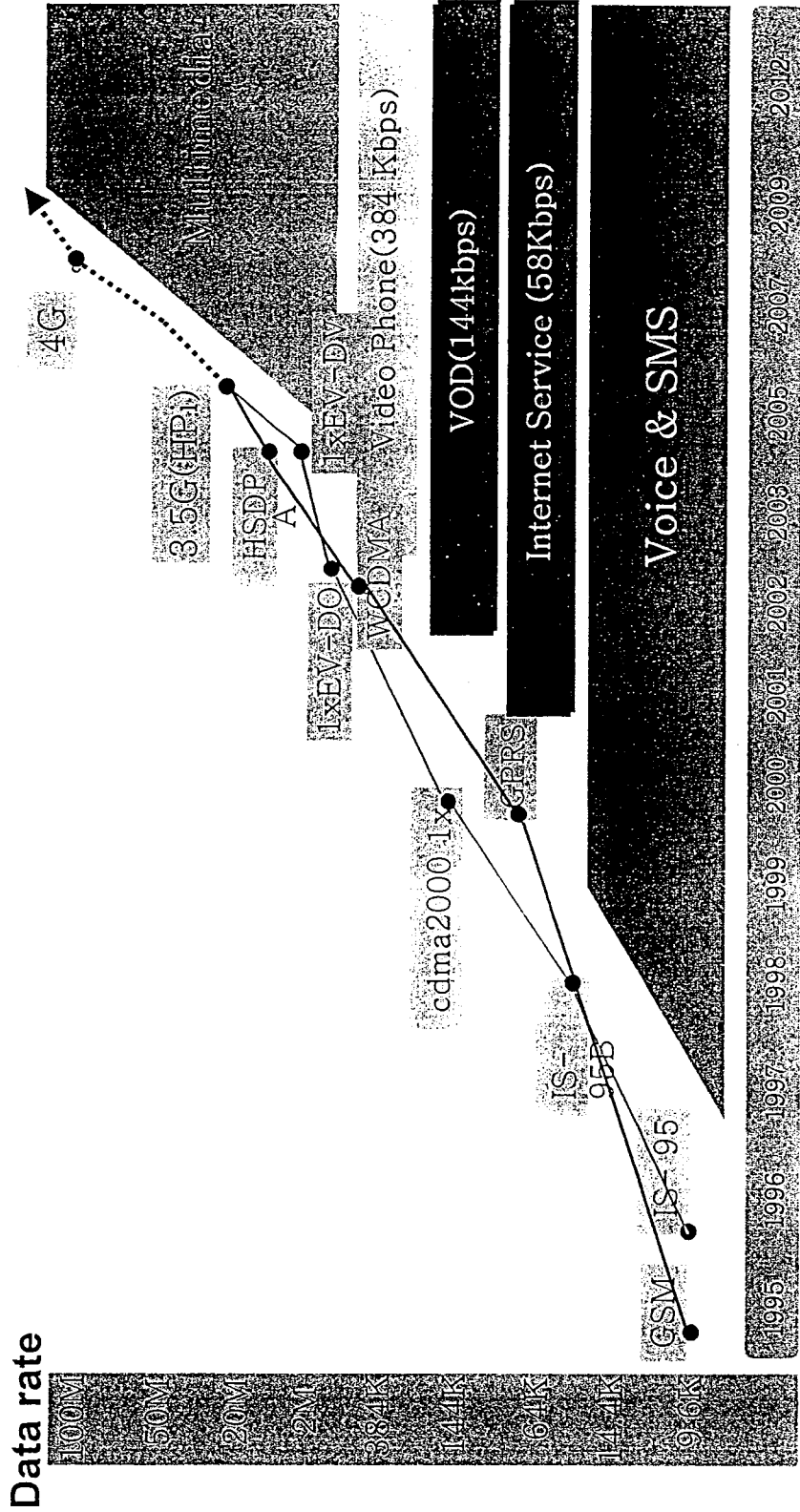
Source: Gartner Dataquest (August 2004)

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Mobile Service Mega Trend

Digitalization → High Data Rate → Broadband/Multimedia → High Intelligence



Terms and Conditions

REDACTED



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Terms and Conditions (Cont.)

REDACTED



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Motorola Mobile Sales Forecast (M units)

REDACTED



Source: Strategy Analytics (December 2004)

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Samsung Mobile Sales Forecast (M units)

	2005	2006	2007	2008	2009	Total
Total (\$B)	97 (\$16)	106 (\$17)	113 (\$18)	116 (\$20)	119 (\$21)	559 (\$92)

Source: Strategy Analytics (December 2004)

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Network Sales Forecast

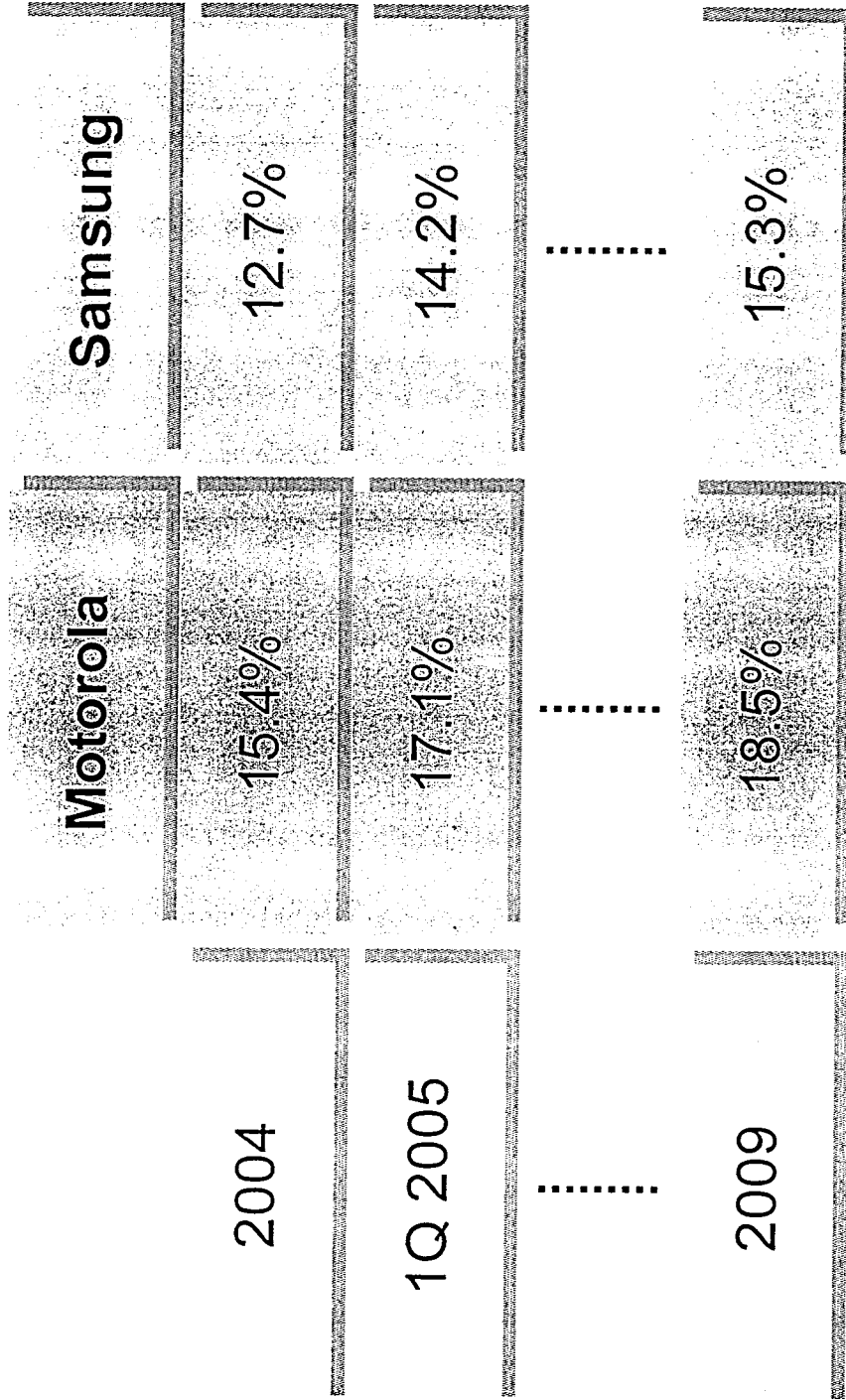
	Past	2005	2006	2007	2008	2009	Total
REDACTED							
Samsung (\$M)	\$3,151	\$563	\$578	\$568	\$564	\$577	\$6,002

Source: Gartner Dataquest (August 2004)

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Market Share



Samsung Proposal

REDACTED



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