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

11 APPLE INC.,  
 12 Plaintiff,  
 13 v.  
 14 SAMSUNG ELECTRONICS CO., LTD.,  
 a Korean corporation; SAMSUNG  
 15 ELECTRONICS AMERICA, INC., a New  
 York corporation; and SAMSUNG  
 16 TELECOMMUNICATIONS AMERICA,  
 LLC, a Delaware limited liability company,  
 17 Defendants.  
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Case No. 11-cv-01846-LHK

**NON-PARTY INTEL'S  
 ADMINISTRATIVE MOTION TO SEAL  
 SELECTED PROPRIETARY MATERIAL**

19 Pursuant to Civil L.R. 7-11 and 79-5(c), and the Court's Order of July 23, 2012 (Dkt.  
 20 # 1288), non-party Intel Corporation ("Intel") moves for an order sealing specific documents that  
 21 contain Intel technical secrets and requiring the parties to use a version of the Intel-Samsung cross  
 22 license agreement that redacts commercially sensitive provisions that are irrelevant to the issues  
 23 in this case. Intel's request is limited to a handful of documents previously submitted under seal  
 24 by the parties and subject to the Court's July 17 order (Dkt. # 1256) and several documents that  
 25 the parties have identified, or are expected to identify, in their exhibit lists:

- 26 • Intel source code and two large technical documents that specify in detail the system  
 27 architecture for Intel's hardware and software;

28

- two exhibits that describe Intel’s scrambling code circuitry and that were attached to Apple’s motion for non-infringement of the ‘867 patent (Dkt. # 925) but that proved to be irrelevant to the Court’s order granting that motion;
- the Intel-Samsung patent cross-license agreement and amendments; and
- Intel invoices for sales of chips to Apple.

Each of these documents contain technical or commercial information that is confidential to Intel. Intel, therefore, requests that the Court protect its proprietary interests in these documents either by sealing them or by admitting redacted versions that omit irrelevant and highly sensitive information.

## ARGUMENT

### I. INTEL SOURCE CODE AND ENGINEERING DOCUMENTS

Samsung has told Intel that its intended trial exhibit list includes portions of Intel source code, as well as the “X-GOLD 61x Product Specification” and the “UMTS RLC Detailed Design Description,” which provide detailed module-by-module specifications of Intel chips and firmware. Intel requests that the Court order that these exhibits be sealed to prevent public access.

Evidence relevant to a dispositive matter may be sealed for “compelling reasons.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). Sealing is warranted where a party has taken steps to maintain the secrecy of the information and would be harmed if it were disclosed. *Network Appliance, Inc. v. Sun Microsystems, Inc.*, Case No. C-07-06053 EDL, 2010 WL 841274, at \*2 (N.D. Cal. Mar. 10, 2010) (finding compelling reason to seal “in light of the confidential nature of the information and the competitive harm to third parties if the confidential information were disclosed”); *Upek, Inc. v. Authentec, Inc.*, Case No. C 10-00424 JF, 2010 WL 1980189, at \*4 (N.D. Cal. May 17, 2010) (noting effort to maintain confidentiality in finding compelling reason to seal).

As described in the accompanying declaration of Josef Hausner, attached as Exhibit A to this motion, Intel maintains the secrecy of the source code and technical documents and would be harmed by their public disclosure. Hausner Decl. at ¶¶ 3, 4, 5 and 11. The source code represents

1 a significant investment and contains numerous trade secrets that provide a competitive advantage  
2 to Intel. Hausner Decl. at ¶ 4. Disclosure of the source code would seriously harm Intel by  
3 enabling potential competitors to shortcut their development efforts by copying Intel’s source  
4 code to create firmware. Hausner Decl. at ¶¶3-4. The harm resulting from disclosure of technical  
5 details of a party’s product is frequently found to provide a “compelling reason” to seal.  
6 *Kamakana*, 447 F.3d 1172, 1179 (compelling reason may be found in avoiding release of trade  
7 secrets); *Network Appliance*, 2010 WL 841274, at \*2; *Dish Network, LLC v. Sonicview USA, Inc.*,  
8 Case No. 09CV1553-L(NLS), 2009 WL 2579052, at \*1 (S.D.Cal. Aug. 20, 2009); *Upek*, 2010  
9 WL 1980189, at \*4.

10 Likewise, the “X-GOLD 61x Product Specification” breaks down the system design of the  
11 X-GOLD 61x modem into its constituent modules and specifies the interfaces and algorithms  
12 used by each module. Hausner Decl. at ¶7. Although The X-GOLD 61x Product Specification is  
13 not source code, it is similarly valuable because it provides a complete specification for the  
14 system design of the X-GOLD 61x modem. Similarly, the “UMTS RLC Detailed Design  
15 Description” details each of the code modules in Intel’s UMTS RLC firmware, identifying each  
16 modules input and output variables, describing what each module does, and documenting the data  
17 structures that it uses. Hausner Decl. at ¶9. It provides the same information about UMTS RLC  
18 firmware design and the parameters and data structures in the UMLC firmware that a software  
19 engineer would extract from review of the code itself. Hausner Decl. at ¶10.

20 Disclosure of these documents would seriously harm Intel on two counts. First,  
21 advantageous features of Intel’s system-level design for its X-GOLD 61x modem and its UMTS  
22 RLC firmware would now be publicly documented and could be copied by Intel’s competitors.  
23 Hausner Decl. at ¶8. Second, Intel would be put at risk of having to compete with products from  
24 manufacturers that did not have to bear the expense or burden of doing their own independent  
25 system development efforts. These risks provide a “compelling reason” to seal the Product  
26 Specification. *See Dish Network*, 2009 WL 2579052, at \*1 (possibility that technical material  
27 could serve as “blueprint” for competitors provides compelling reason to seal); *Network*  
28 *Appliance*, 2010 WL 841274 at \*2.

1 Sealing these documents will not deprive the public of the opportunity to follow and  
2 meaningfully review the proceedings. The parties' experts will still be able to testify openly  
3 about relevant aspects of the Intel technology and to explain what these documents say. The  
4 public will be left with sufficient basis in the open record to understand the evidence and assess  
5 the merits of the case. *See Dish Network*, 2009 WL 2579052, at \*1 (finding compelling reason to  
6 seal where documents that would remain publicly available "describe in less detail the infringing  
7 nature of the devices and software but provide sufficient information to enable public  
8 understanding of the judicial process without the need to make public the detailed **technical**  
9 explanations contained in the report").

## 10 **II. INTEL CIRCUIT INFORMATION IN SUMMARY JUDGMENT MOTION** 11 **EXHIBITS**

12 During briefing of Apple's motion seeking summary judgment of non-infringement of the  
13 '876 patent (Dkt. # 925), Apple submitted circuit illustrations for the design of proprietary  
14 scrambling code circuits in Intel modem products and expert testimony regarding these circuits.  
15 This material was included in Exhibits 4 and 7 to the Selwyn Declaration in Support of Apple's  
16 Motion for Summary Judgment (Dkt. # 925). Apple requested that these exhibits be sealed in a  
17 Renewed Motion to Seal filed on July 24 (Dkt. # 1317). Intel requests either these exhibits be  
18 sealed or that discussion of Intel proprietary technology be redacted from the public versions of  
19 these documents.

20 Exhibit 4 to the Selwyn Declaration is an Expert Report on Infringement of the '867  
21 patent from Samsung's expert witness Dr. Richard Wessell, which analyzes the verilog (source)  
22 code for Intel's scrambling code generator at paragraphs 53, 57, 61, 65 – 69, 74 – 75, and 87 – 91.  
23 Exhibit 7 is an Expert Report on Non-Infringement of the '867 patent from Apple's expert  
24 witness Dr. Wayne Stark. Dr. Stark's report describes Intel's scrambling code circuitry in detail  
25 at pages 6 through 9, but he bases his non-infringement conclusion ultimately on an analysis of  
26 section 5.2.2 of the 3GPP TS 25.213 standard, and not on any feature of Intel's circuitry. See  
27 Stark's Expert Report (Dkt. # 923, Selwyn Decl. Ex. 7) at p. 16. Intel's interest in preventing  
28 public disclosure of its circuit designs provides compelling reason to justify redaction of those

1 paragraphs of the Wessell and Stark reports. *See Network Appliance*, 2010 WL 841274, at \*2;  
2 *Dish Network*, 2009 WL 2579052, at \*1.

3 There is no compelling public interest in access to those paragraphs. When the Court  
4 granted Apple's summary judgment on non-infringement of the '867 patent (Dkt. # 1156), it did  
5 so on the basis of construction of Samsung's claims and application of that language to the  
6 requirements of the 3GPP TS 25.213 standard. Order Granting in Part and Denying in Part  
7 Apple's Motion for Partial Summary Judgment (Dkt. #1156) at 8-9. The particulars of Intel's  
8 implementation were not discussed by the Court and were not relevant. The Court did not cite to  
9 either of Exhibit 4 or 7. Since Intel's implementation of the scrambling code circuit did not  
10 inform the Court's decision, the public interest in access to this material is greatly diminished.  
11 *See Network Appliance*, 2010 WL 841274, at \*2 (granting request to seal where "although the  
12 documents in question are attached to a dispositive motion, they had no bearing on the resolution  
13 of the dispute on the merits and are therefore more akin to ... 'unrelated,' non-dispositive motion  
14 documents").<sup>1</sup>

### 15 **III. INTEL – SAMSUNG CROSS LICENSE AND INTEL INVOICES TO APPLE**

16 Apple contends that the 1993 Intel-Samsung patent cross-license agreement, which was  
17 subsequently amended in 2003 and 2004, exhausts certain of Samsung's patents. Samsung  
18 attached copies of the agreement and the amendments to its opposition to an Apple motion for  
19 summary judgment (Exhibits K1, K2 and K3 to Hecht Declaration, Dkt. # 847) and to a  
20 declaration in support of its own motion to exclude Apple's expert opinions (Exhibit 33 to Martin  
21 Declaration, Dkt. # 927). Intel also understands that the parties may want to use these agreements  
22 as exhibits at trial. Apple has also indicated that, in connection with its exhaustion defense, it  
23 intends to introduce examples of Intel invoices for chips it has sold to Apple.

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26 <sup>1</sup> Samsung's witness list also identifies Marcus Paltian and Andre Zorn, IMC engineers  
27 who were deposed in this case. Intel assumes that Samsung intends to submit portions of that  
28 deposition transcript, but Samsung has not identified specific excerpts. In the event that Samsung  
identifies portions that disclose Intel confidential information, Intel reserves its right to ask the  
Court at that time to seal those excerpts.





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**CERTIFICATE OF SERVICE**

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on July 27, 2012.

*/s/ Anna Freddie*

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Anna Freddie