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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., a California corporation,  
  
Plaintiff,  
  
v.  
  
SAMSUNG ELECTRONICS CO., LTD., a  
Korean corporation; SAMSUNG  
ELECTRONICS AMERICA, INC., a New  
York corporation; and SAMSUNG  
TELECOMMUNICATIONS AMERICA,  
LLC, a Delaware limited liability company,  
  
Defendants.

Case No. 11-cv-01846-LHK

**JOINT MOTION REGARDING  
SEALING OF TRIAL EXHIBITS**

Date: July 27, 2012  
Time: 3:00 pm  
Place: Courtroom 1, 5th Floor  
Judge: Hon. Lucy H. Koh

1 Pursuant to the Minute Order and Case Management Order of July 24, 2012 (Dkt. No.  
2 1329), Apple Inc. and Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and  
3 Samsung Telecommunications America, LLC (collectively, "Samsung") have met and conferred  
4 regarding the treatment of confidential information at trial.

5 Pursuant to Civil L.R. 7-11, the Parties jointly move for an order allowing the parties to  
6 request that certain types of highly sensitive information be sealed and establishing a protocol  
7 during trial for *in camera* review of proposed redacted versions of trial exhibits.

### 8 **Relief Sought**

9 Although the Parties' negotiations continue, they have agreed to propose for the Court's  
10 consideration the following protocol:

11 1. As previously ordered, the Parties will disclose direct examination exhibits to be  
12 used in witness examinations at 7 pm two days before the witness is scheduled to testify.  
13 Before the next day's trial session, the parties will jointly lodge copies of such exhibits  
14 highlighted to show the redactions requested, enabling the Court to review and reject any  
15 overbroad sealing requests.

16 2. As previously ordered, the Parties will disclose cross examination exhibits to be  
17 used in witness examinations at 2 pm the day before the witness is scheduled to testify.  
18 By 5 pm the day before the witness is scheduled to testify, the parties will jointly lodge  
19 copies of such exhibits highlighted to show the redactions requested, enabling the Court to  
20 review and reject any overbroad sealing requests.

21 3. The Parties would limit their sealing requests to the categories of highly  
22 confidential, sensitive information enumerated below, except to the extent good cause  
23 exists to expand the categories.

24 4. To the extent that the Court approves any such sealing requests, only the approved  
25 redacted versions of the trial exhibits shall be displayed to the public. The Court, the  
26 witness and the jury may review the unredacted versions and the unredacted versions shall  
27 be received in evidence and maintained under seal.  
28



1           **2. The Parties request an order allowing sealing of discrete categories of**  
2           **evidence.**

3           The parties acknowledge the presumption of access to judicial records arising from the  
4 public’s interest in understanding of the judicial process and of significant public events. The  
5 parties also recognize that the presumption of openness will apply to all documents introduced at  
6 trial. (Dkt. No. 1256 at 3.) Nonetheless, “‘compelling reasons’ sufficient to outweigh the  
7 public’s interest in disclosure and justify sealing court records exist when such “court files might  
8 have become a vehicle for improper purposes,” or for release of trade secrets. *Kamakana v. City*  
9 *and County of Honolulu*, 447 F.3d 1172, 1177 (9th Cir. 2006) (quoting *Nixon v. Warner*  
10 *Comm’ns, Inc.*, 435 U.S. 589, 598 (1978)). Indeed, in a complex trial such as this one involving  
11 multinational corporations with legitimate business interests in the secrecy of certain types of  
12 information, “documents of exceptionally sensitive information” exist “that truly deserve  
13 protection.” Dkt. No. 1256 at 3. The Court should allow this information “to be redacted or kept  
14 from the public.” *Id.*

15                   **a. Highly Sensitive Financial Information**

16           The parties request to seal their most highly sensitive and non-public financial and  
17 manufacturing information comprising cost data, profit margins, and revenue and unit sales  
18 information by product.

19           There are multiple “compelling reasons” to seal this type of information. *Bauer Bros.*  
20 *LLC v. Nike, Inc.*, No. 09cv500–WQH–BGS, 2012 WL 1899838, at \*3-4 (S.D. Cal. May 24,  
21 2012) (sealing deposition testimony and documents containing financial data relating to sales and  
22 marketing information, product development, profits, advertising and marketing, “the financial  
23 data sought to be sealed by Nike could be used for improper purposes for Nike’s business  
24 competitors, as it includes . . . business sales and accounting data . . . and costs analysis”); *TriQuint*  
25 *Semiconductor v. Avago Techs., Ltd.*, No. CV 09-1531-PHX-JAT, 2011 U.S. Dist. LEXIS 143942,  
26 at \*10-12 (D. Ariz. Dec. 13, 2011) (finding compelling reasons to seal information regarding  
27 sales, market analysis, capital expenditures, cost, and manufacturing capacity.) This Court has  
28 found that “long-term financial projections, discussions of business strategy, and competitive

1 analyses” provide compelling reasons for sealing. *Kreiger v. Atheros Commc’ns, Inc.*, No. 11–  
2 CV–00640–LHK, 2011 WL 2550831, at \*1 (N.D. Cal. Jun. 25, 2011) (sealing presentation  
3 containing highly sensitive and confidential financial information). Production information and  
4 “precise revenue information results” and “exact sales and production numbers,” which could be  
5 used by competitors to calibrate their pricing and distribution methods to undercut defendant, also  
6 provide compelling reasons for sealing. *Bean v. John Wiley & Sons, Inc.*, No. CV 11–08028–  
7 PCT–FJM, 2012 WL 1078662, at \*6-7 (D. Ariz. Mar. 30, 2012) (sealing charts summarizing  
8 defendant’s sales and revenue figures broken out by product).

9 Disclosure of the Parties’ specific cost information, profit margins, and product line-  
10 specific information would give competitors a substantial and unfair advantage. (Declaration of  
11 Mark Buckley in Support of Apple Motions to Seal (“Buckley Decl.”) ¶ 4-6; Declaration of  
12 Gregory Joswiak in Support of Apple Motions to Seal (“Joswiak Decl.”) ¶ 7-8. Knowledge of  
13 this kind of information would allow competitors to tailor their product offerings and pricing to  
14 undercut the Parties’ product offerings. Competitors would learn what price points to target in  
15 which specific markets, and understand the Parties’ weaknesses in connection with products that  
16 have weak profit margins or costly components. (Buckley Decl. ¶ 6; Joswiak Decl. ¶ 7;  
17 Declaration of GiHo Ro in Support of the Parties’ Joint Motion Regarding the Sealing of Trial  
18 Exhibits (“Ro Decl.”) ¶¶ 8-9.). Allowing public access to the parties’ cost, profit, and product-  
19 line specific information would also harm their competitive position with component suppliers.  
20 Buckley Decl. ¶ 6; Ro Decl. ¶¶ 8-10. Suppliers could use cost information to alter their pricing  
21 on components the parties use in their products. *Id.*

22 Exhibits PX29 and DX777 are exemplary of the kinds of documents at issue. The Parties  
23 will highlight these exhibits to show the highly confidential portions and present them to the  
24 Court for inspection during the hearing this afternoon. Trial exhibit PX29 includes the specific  
25 categories of operating expenses and the amounts various Samsung entities spend on each  
26 category, specific costs incurred in manufacturing the products at issue, material costs for accused  
27 products, and Samsung’s profits and profit margins for each accused product. DX777 contains  
28 similarly detailed cost-related information for Apple. DX777 contains unit and revenue data

1 broken down by market, product model, and product sub-model. Such information is extremely  
2 sensitive. For example, only Apple knows how many 16 GB iPhone 4S Apple sold last quarter in  
3 the United States as compared to 64 GB iPhone 4S or 8 GB iPhone 3GS, and what Apple's profit  
4 margins on each of those products was. (Joswiak Decl. ¶ 8.) If this sort of treasure trove of  
5 competitive intelligence were made public, competitors would be able to target their product  
6 offerings at the parties' most successful and profitable products. (Joswiak Decl. ¶ 8; Ro Decl. at ¶  
7 10.)

8 Also highly sensitive is production capacity information such as that shown in PX25.35.  
9 If competitors gained access to capacity data, they would learn when the parties' production  
10 capacity is typically stretched thinly and when they have excess capacity, and could alter their  
11 production timing accordingly. (Buckley Decl. ¶ 4.) PX25.35 also contains product-line specific  
12 capacity data, which is even more critically sensitive. *Id.* Disclosure would allow competitors to  
13 see what specific lines of products are increasing its supply and which are decreasing, giving a  
14 significant insight into the parties' future business plans. Such information would similarly  
15 reveal to competitors what precise products they need to counter, and how much they should  
16 invest in that specific area. (*Id.*)

17 Also of great concern to the Parties is the potential disclosure of capacity data to contract  
18 manufacturers. It is critical that the Parties maintain negotiation position in relationship to their  
19 suppliers and manufacturing services providers. (*Id.* ¶ 5.) If such entities learn the Parties'  
20 capacity patterns or similar supply chain information, they could predict when the Parties would  
21 be most motivated to increase supply and could use that leverage in negotiations relating to  
22 manufacturing and component supply services.

23 Because such financial information is so sensitive, both parties guard it carefully. Apple's  
24 highly sensitive financial data is among the most painstakingly protected information at the  
25 company. (Buckley Decl. ¶ 3.) Even within Apple, only a limited number of individuals are  
26 authorized to receive the information. *Id.* Apple does not share its nonpublic financial data—  
27 including cost data, product line details, profit margins, and capacity data—with third parties or  
28

1 vendors. *Id.* In the rare instance it is required to share any nonpublic financial data with third  
2 parties, Apple insists on very restrictive nondisclosure agreements or protective orders. *Id.*

3 Similarly, information of the kind described above has never been disclosed to the public  
4 and is kept in the strictest confidence within Samsung. (Ro Decl. ¶ 6.); *see Bean*, 2012 WL  
5 1078662, at \*6-7 (finding additional justification to seal “information . . . kept confidential not  
6 only from the public, but also from [defendant’s] own employees”). The financial data at issue  
7 here is only made available to a limited number of employees on a need-to-know basis. Samsung  
8 instructs its employees to keep hard copies of business documents in secure locations, hires  
9 private security forces to monitor its facilities, asks each employee to walk through a metal  
10 detector when exiting its offices, and uses special paper that triggers metal detectors if carried  
11 outside Samsung offices. (Dkt. 987-47; Decl. of Han-Yeol Ryu at ¶¶ 12-14.) Samsung produced  
12 documents containing highly sensitive financial data in this litigation only to Apple’s outside  
13 counsel and experts who had signed the Protective Order. Samsung went to great lengths to  
14 protect the confidentiality of disclosed data; Samsung distributed a limited number of numbered  
15 compact discs that contained soft copies of the data, retrieved the discs after a certain amount of  
16 time, and only permitted the inspection of the most confidential data in a secure location to  
17 prevent the copying or dissemination of Samsung’s data. (Ro Decl. ¶ 6.)

18 The extensive financial data that the Parties seek to seal would “do little to aid the public’s  
19 understanding of the judicial process, but have the potential to cause significant harm to [Apple’s]  
20 competitive and financial position within its industry.” *Network Appliance, Inc. v. Sun*  
21 *Microsystems Inc.*, No. C-07-06053 EDL, 2010 U.S. Dist. LEXIS 21721, at \*13-14 (N.D. Cal.  
22 Mar. 10, 2010). *Network Appliance*, 2010 U.S. Dist. LEXIS 21721, at \*13-14 While the  
23 disclosure of some information during trial may be necessary to challenge the experts’  
24 calculations, the exhibits themselves include detailed cost, product line information, and profit  
25 margins provide a level of detail far beyond what is necessary to understand the parties’ positions  
26 and the damages and other remedies the parties seek. Accordingly, the parties’ need to seal this  
27 information outweighs any public interest in full disclosure.

1                   **b.       Specific Terms of Licenses, Settlements, Acquisitions, and Source Code**

2           The Parties are continuing to discuss potential stipulations or summary exhibits that would  
3   obviate the need to submit confidential license, settlement and acquisition agreements as exhibits.  
4   If this is not practicable, however, the Parties may seek to seal specific license agreements and  
5   information derived from license agreements involving third parties, or to at least redact the  
6   counterparty names. Such material is consistently held by courts to meet the “compelling  
7   reasons” standard of the Ninth Circuit. *See, e.g., Electronic Arts, Inc. v. United States District*  
8   *Court for the Northern District of California*, 298 F. App’x 568, 569 (9th Cir. 2008) (finding  
9   pricing terms, royalty rates, guaranteed minimum payment terms of licensing agreement  
10   constituted trade secret and ordering sealing of license agreement filed as trial exhibit);  
11   *Powertech Tec., Inc., v. Tessera, Inc.*, No. C 11-6121 CW, 2012 U.S. Dist. LEXIS 75831, at \*5  
12   (N.D. Cal. May 31, 2012) (compelling reasons to seal license agreement).

13           There are compelling reasons to seal court records containing “pricing terms, royalty  
14   rates and guaranteed minimum payment terms” found in licensing agreements which “plainly  
15   fall[] within the definition of ‘trade secrets.’” *Id. Electronic Arts, Inc.*, 298 F. App’x at 569  
16   (quoting *Kamakana*, 447 F.3d at 1179) Further, license agreements are the subject of  
17   nondisclosure agreements and are generally highly confidential to Apple and the third parties that  
18   signed those agreements. (Tierney Decl. ISO Apple's Renewed Motion to Seal ¶ 5; Buckley  
19   Declaration ¶ 9; *see also* previously submitted motions to seal, Dkt. Nos. 1328, 1340, 1376, 1378,  
20   1390, 1394, and 1396). Those third parties also likely consider the content of these license  
21   agreements to be highly confidential “trade secrets” and public disclosure of the information in  
22   those agreements to be extremely harmful to them. (Tierney Decl. ¶ 5.) Apple carefully  
23   maintains strict confidentiality of these license provisions. Even within Apple, very few  
24   employees have access to these agreements, and they are maintained in a highly secure manner to  
25   prevent inadvertent disclosure. (Buckley Declaration ¶ 8.)

26           There is very little public interest in knowing the specific licenses and agreements that  
27   Apple or Samsung have entered into, the existence of which is a proprietary trade secret not only  
28   to the parties to this action but to the counterparties in these agreements as well. There is even



1 less public interest in the names of the counterparties to Apple’s and Samsung’s license  
2 agreements and disclosing those names would subject those third parties to competitive harm.  
3 *Network Appliance*, 2010 U.S. Dist. LEXIS 21721, at \*7 (material that would subject third parties  
4 to competitive harm sealable).

5 Finally, the Parties’ intend to introduce source code contained in their respective trial  
6 exhibits into evidence during the trial. The parties will not oppose each other’s efforts to seal the  
7 record with respect to this source code as well as with respect to source code of third parties, and  
8 will cooperate to preserve the confidentiality of the source code.<sup>1</sup>

9 **c. Other Sensitive Material – Only to the Extent *Not* Published to the**  
10 **Jury**

11 Following the Court’s suggestion at the July 23 Final Pretrial Conference, the parties have  
12 evaluated whether certain foundational confidential information could be eliminated from the  
13 record.

14 Apple requests that certain consumer research reports be received in evidence only to the  
15 extent shown to the jury. Among the documents Samsung has selected as potential exhibits in  
16 this action are the quarterly iPhone buyers surveys that Apple conducts. Joswiak Decl. ¶ 3;  
17 DX767. The surveys reveal, country-by-country, the factors driving customers to buy Apple  
18 products versus competitive products such as Android. *Id.* No competitor has access to Apple’s  
19 customer base to conduct such in-depth analysis. *Id.* Currently, Apple competitors can only  
20 speculate how Apple’s customers weigh the relative value of, for instance, FaceTime video  
21 calling functionality, battery life, or an LED flash, and they have to guess as to what

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22 <sup>1</sup> District courts in the Ninth Circuit have held that nonpublic, proprietary source code is  
23 properly sealed under the “compelling reasons” standard because such “information represents  
24 trade secrets sufficiently sensitive to outweigh the public’s interest in accessibility of the  
25 evidence.” *Network Appliance v. Sun Microsystems Inc.*, No. C-07-06053 EDL, 2010 WL 841274,  
26 \*1, \*4 (N.D.Cal. March 10, 2010); *see also Wacom Co., Ltd. v. Hanvon Corp.*, No. C06-5701RJB,  
27 2007 WL 3026889, \*3 (W.D.Wash. Oct. 16, 2007) (sealing confidential, nonpublic, proprietary  
28 source code under the compelling reasons standard); *Omax Corp. v. Flow Intern. Corp.*, No. C04-  
2334RSL, 2007 WL 4108604, \*1-2 (W.D.Wash. Nov. 13, 2007) (sealing or redacting various  
instances of source code upon a “compelling showing that that the public’s right of access is  
outweighed by the interests of the public and the parties in protecting files, records, or documents  
from public view.”).

1 demographics – age, gender, occupation – are most satisfied with Apple’s products. *Id.*  
2 Moreover they do not know how the preferences of individuals in, for instance, Japan differ from  
3 those in Australia, Korea, France and the United States. *Id.* All of that information is set out in  
4 exacting detail in the proposed exhibits. No other entity could replicate this research because no  
5 other entity has access to the customer base that Apple has.

6 Just as important as the survey data itself are the *conclusions* Apple has drawn from the  
7 data. *Id.* ¶ 4. Knowing what Apple *thinks* about its customer base preferences is extremely  
8 valuable to Apple competitors because it would allow them to infer what product features Apple  
9 is likely to offer next, when, and in what markets. *Id.* Having an advance look into Apple’s next  
10 moves would allow competitors to prepare products and marketing strategy to counter Apple’s  
11 future products and target their product development plans accordingly. *Id.*

12 The Parties’ exhibit lists also contain research reports prepared by third parties and  
13 purchased by the Parties under subscription. Third-party research reports are assembled by  
14 providers at great expense and sold for many thousands of dollars. (Dkt. No. 1317-3, Sabri Decl.  
15 ¶ 3.) As a result, the parties are contractually obligated to keep the reports confidential.  
16 Disclosure of recent market research reports in their entirety on a publicly accessible website  
17 could supplant entirely the market for such reports. If Apple were required to publicly disclose  
18 this information, which Apple acquired under an agreement to keep the information private and  
19 confidential, the affected third party companies could be reluctant to do business with Apple  
20 again in the future, potentially permanently harming Apple’s relationships and preventing Apple  
21 from obtaining this critical market research data. (*Id.* ¶ 4.)

22 Apple does not request sealing of such documents in their entirety, nor does Apple request  
23 that either party be restricted from displaying to the jury portions of reports as they deem  
24 necessary. Apple requests merely that *only* those portions of sensitive market research documents  
25 that are *actually* displayed to the jury during the course of trial be received in evidence and made  
26 public. Such a process balances the public’s interest in understanding the evidence that is  
27 germane to the issues at trial while protecting Apple’s compelling interest to protect its  
28

1 competitive advantage and third party market research providers' compelling interest in  
2 protecting their subscription business models.

3 **3. The Parties' sealing requests are substantially narrower than those requested**  
4 **pre-trial.**

5 By limiting their sealing requests to the above categories, the parties will allow to be made  
6 public large amounts of confidential information that was previously subject to pre-trial sealing  
7 motions. Among the previously undisclosed information that will become available in  
8 accordance with this joint motion are:

- 9 • **High-level financial information:** Revenue, number of units sold by product line,  
10 price (wholesale and final consumer) data, sources of revenue (search engines,  
11 accessories, specific products), and information regarding revenue deferred over  
12 lifespan of product to cover product updates;
- 13 • **Advertising expenditures:** Both total expenditures and expenditures by medium;
- 14 • **Discussions relating to licenses:** The fact that licenses exist, the fact that they  
15 relate to the products at issue, the number of license agreements, and identities of  
16 entities with whom the parties have has discussed, licenses even if no actual  
17 agreement was entered into;
- 18 • **Information relating to general consumer behavior:** Excerpts of market  
19 research studies, information relating to loyalty to product platforms, consumer  
20 demand for design and particular features at issue in the case;
- 21 • **Expert Surveys:** conducted in connection with this case;
- 22 • **Information relating to product design:** confidential communications relating to  
23 manufacturing challenges, relevant component options, teardowns of competitive  
24 devices, reliability testing, and cost analysis relating to specific features or  
25 components at issue;
- 26 • **Industrial Design information:** previously top-secret computer aided design and  
27 model and prototype information and designer sketches;
- 28 • **Confidential product code names;**

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- **General advertising strategy information:** to the extent relevant; and
- **Pre-suit Settlement and licensing negotiations between the Parties.**

From these and other disclosures during the course of trial, the public will learn a great deal about the Parties’ businesses and obtain a comprehensive understanding of the judicial process and the issues and facts in dispute.

**Conclusion**

Because compelling reasons in favor of secrecy exist, the parties respectfully request that the Court issue an order stating that the parties may request sealing of portions of trial exhibits that include: (1) highly sensitive financial information; (2) confidential licensing information; and/or (3) sensitive technical and business-related. The Parties further respectfully that the Court adopt the protocol described above for confirming the extent to which exhibits may be sealed, as set forth in the proposed order submitted herewith.

1 Dated: July 27, 2012

HAROLD J. MCELHINNY (CA SBN 66781)  
hmcclhinny@mofo.com  
MICHAEL A. JACOBS (CA SBN 111664)  
mjacobs@mofo.com  
RACHEL KREVANS (CA SBN 116421)  
rkrevans@mofo.com  
JENNIFER LEE TAYLOR (CA SBN 161368)  
jtaylor@mofo.com  
ALISON M. TUCHER (CA SBN 171363)  
atucher@mofo.com  
RICHARD S.J. HUNG (CA SBN 197425)  
rhung@mofo.com  
JASON R. BARTLETT (CA SBN 214530)  
jasonbartlett@mofo.com  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

11 WILLIAM F. LEE  
william.lee@wilmerhale.com  
12 WILMER CUTLER PICKERING  
13 HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
Facsimile: (617) 526-5000

16 MARK D. SELWYN (SBN 244180)  
mark.selwyn@wilmerhale.com  
17 WILMER CUTLER PICKERING  
18 HALE AND DORR LLP  
950 Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 858-6000  
Facsimile: (650) 858-6100

21 By: Michael A. Jacobs  
22 Michael A. Jacobs

23 Attorneys for Plaintiff and  
24 Counterclaim-Defendant  
APPLE INC.

1 Dated: July 27, 2012

2 QUINN EMANUEL URQUHART &  
3 SULLIVAN, LLP  
4 Charles K. Verhoeven (Cal. Bar No. 170151)  
5 charlesverhoeven@quinnemanuel.com  
6 50 California Street, 22nd Floor  
7 San Francisco, California 94111  
8 Telephone: (415) 875-6600  
9 Facsimile: (415) 875-6700

10 Kevin P.B. Johnson (Cal. Bar No. 177129)  
11 kevinjohnson@quinnemanuel.com  
12 Victoria F. Maroulis (Cal. Bar No. 202603)  
13 victoriamaroulis@quinnemanuel.com  
14 555 Twin Dolphin Drive 5th Floor  
15 Redwood Shores, California 94065  
16 Telephone: (650) 801-5000  
17 Facsimile: (650) 801-5100

18 Michael T. Zeller (Cal. Bar No. 196417)  
19 michaelzeller@quinnemanuel.com  
20 865 S. Figueroa St., 10th Floor  
21 Los Angeles, California 90017  
22 Telephone: (213) 443-3000  
23 Facsimile: (213) 443-3100

24 By: Victoria Maroulis  
25 Victoria Maroulis

26 Attorneys for Defendants and  
27 Counterclaim-Plaintiffs  
28 SAMSUNG ELECTRONICS CO.,  
LTD., SAMSUNG ELECTRONICS  
AMERICA, INC. and SAMSUNG  
TELECOMMUNICATIONS  
AMERICA, LLC

