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MICROSOFT CORPORATION
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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
16 ELECTRONICS AMERICA, INC., a New
York corporation; SAMSUNG
17 TELECOMMUNICATIONS AMERICA,
LLC, a Delaware limited company,
18

19 Defendant.
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Case No. 11-CV-01846-LHK

SUPPLEMENTAL DECLARATION OF
NATHANIEL E. DURRANCE IN SUPPORT
OF NON-PARTY MICROSOFT
CORPORATION'S MOTION TO SEAL
CONFIDENTIAL LICENSE AND TERMS
[ECF DOC. 1390]

21 I Nathaniel E. Durrance do hereby declare:

22 1. I am an attorney at Perkins Coie LLP representing non-party Microsoft
23 Corporation ("Microsoft") in the above captioned case. I make this declaration based on my
24 personal knowledge unless otherwise indicated.

25 2. On July 21, 2012, Microsoft received a fax communication from an attorney
26 representing Samsung at Quinn Emanuel Urquhart & Sullivan, LLP regarding this case (the
27 "Samsung case"). The fax informed Microsoft that Samsung identified a trial exhibit containing
28

1 financial terms of Microsoft's license with Samsung. I was sent a copy of the fax on July 24,
2 2012.

3 3. The trial exhibit at issue is Trial Exhibit 630 to the Expert Report of David Teece,
4 dated March 22, 2012 (the "Teece Report"). According to the letter from Samsung's counsel, the
5 Teece Report contains Exhibits 3A and 3B summarizing key financial terms of various contracts
6 between Samsung and third parties. One such contract is a recent Confidential Patent License
7 Agreement between Samsung and Microsoft (the "Confidential Agreement").
8

9 4. Microsoft filed a Motion to Seal the Confidential Agreement and its Terms on July
10 26, 2012 (ECF Docs 1390 (motion), 1391 (memo in support of motion), and 1395 (supporting
11 declaration)). As explained in Microsoft's Motion to Seal, the terms of the Confidential
12 Agreement revealed in the Teece Report are highly sensitive confidential information of
13 Microsoft that, if revealed to the public and Microsoft's competitors during the Samsung case,
14 would substantially harm Microsoft. The terms from the Confidential Agreement contained in
15 the Teece Report include the amount of license payments and royalties that are to be paid by
16 Samsung to Microsoft as well as other detailed licensing and payment information such as the
17 licensed products/technology and length of the license.
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19 5. On July 27, 2012, the Court held a hearing at which it stated that "based on the
20 Ninth Circuit's decision in Electronic Arts, pricing, royalty rates, minimum payment terms of
21 licensing agreement will be sealable.... [as well as] the duration of the license." (7/27/12 Hearing
22 Transcripts). The Court also issued a Minute Order and Case Management Order (ECF Doc
23 1426) giving until Monday July 30, 2012 at 5pm to file revised motions to seal and/or
24 supplemental declarations.
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26 6. Microsoft understands that its Motion to Seal and supporting documents were
27 adequate, as there was no direct opposition filed and the Court did not mention any deficiencies
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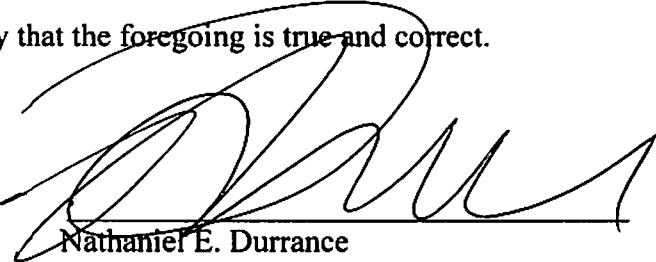
1 with Microsoft's Motion at the hearing. However, out of an abundance of caution, Microsoft is
2 filing this Supplemental Declaration to provide the Court with the only known proposed trial
3 exhibit in the Samsung case reciting terms from the Confidential Agreement.

4 7. Microsoft is lodging with the Court, pursuant to Civil Local Rule 79-5, highlighted
5 and redacted copies of the document from Samsung's counsel summarizing the confidential terms
6 of the Confidential Agreement that are included in Trial Exhibit 630. Microsoft is not aware of
7 the extent of the trial exhibits or planned testimony in this case that will contain Microsoft's
8 confidential financial information. Accordingly, Microsoft is submitting a redacted copy of the
9 only document it is aware of from the Samsung case having the confidential terms, but asks the
10 Court for an order generally protecting the Confidential Agreement and its terms from public
11 disclosure.
12

13 8. I note that the document being lodged with the Court incorrectly states that
14 "Exhibit 3B contains a table summarizing the key terms of various contracts between Apple and
15 third parties to the litigation." The document should state that "Exhibit 3B contains a table
16 summarizing the key terms of various contracts between Samsung and third parties to the
17 litigation."
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20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on July 30, 2012

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Nathaniel E. Durrance