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 LTD., SAMSUNG ELECTRONICS AMERICA,  
 15 INC. and SAMSUNG  
 TELECOMMUNICATIONS AMERICA, LLC  
 16

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
 19

20 APPLE INC., a California corporation,  
 21 Plaintiff,  
 22 vs.  
 23 SAMSUNG ELECTRONICS CO., LTD., a  
 Korean business entity; SAMSUNG  
 24 ELECTRONICS AMERICA, INC., a New  
 York corporation; SAMSUNG  
 25 TELECOMMUNICATIONS AMERICA,  
 LLC, a Delaware limited liability company,  
 26 Defendant.  
 27

CASE NO. 11-cv-01846-LHK  
**RENEWED ADMINISTRATIVE MOTION  
 TO FILE DOCUMENTS UNDER SEAL**

1 Pursuant to Civil L.R. 7-11 and 79-5, and General Order No. 62, Defendants Samsung  
2 Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications  
3 America, LLC (collectively, “Samsung”) hereby bring this administrative motion for an order to  
4 seal certain highly sensitive and confidential financial documents filed by the parties.

5 **Request for Relief**

6 On July 17, 2012, the Court denied several sealing motions filed by both Samsung and  
7 Apple. ECF No. 1256. The Court further ordered the parties to carefully scrutinize the  
8 documents they sought to seal, and only request that documents containing “exceptionally  
9 sensitive information that truly deserve[s] protection” be kept under seal. *Id.* at 3. The Court  
10 provided further guidance regarding sealing issues at the hearing on July 27, 2012.

11 Samsung has complied with the Court’s Order and guidance, carefully reviewing each  
12 document page by page. Of the hundreds of documents the parties had originally filed under  
13 seal, Samsung assessed the harm that would result from their disclosure and now seeks to seal  
14 very limited and specific portions of only 15 documents. Samsung does not seek to seal financial  
15 statements, public filings, or any publicly-available data. Nor does Samsung seek to redact  
16 sensitive non-public information, such as its confidential tax agreement with the Internal Revenue  
17 Service. Instead, Samsung’s request is limited to a narrow subset of financial data that is non-  
18 public, highly sensitive, and will cause competitive harm if disclosed. Compelling reasons  
19 support sealing the portions of these documents that identify Samsung’s exact costs of goods sold,  
20 costed bills of materials, and product-by-product profits because disclosure of this information  
21 would cause Samsung competitive harm. If disclosed, the information would allow Samsung’s  
22 competitors to undercut Samsung’s pricing, gain leverage against Samsung in business and supply  
23 agreement negotiations, or engage in a variety of other behaviors that would damage Samsung’s  
24 ability to compete. Far more detailed that “financial information” that’s generally available to  
25 the public and Wall Street experts, the specific cost data, bills of materials, and product-by-  
26 product profits are closely guarded secrets in the mobile device industry. Given the fierce price  
27 competition, companies cannot disclose this information without handing competitors a strategic  
28 advantage.

1 Attached hereto as Exhibit 1 is Table A which contains a list of documents that Samsung is  
2 seeking to seal, including a description of the sealable information and the compelling reason for  
3 each document to be sealed. The compelling reasons to seal these exceptionally sensitive  
4 documents are set out further in this Renewed Motion and in the Declaration of GiHo Ro, attached  
5 hereto.

6 **Compelling Reasons Support Granting Samsung’s Very Limited and Specific**  
7 **Request to Seal Samsung’s Per Product Cost and Profit Information**

8 The information at issue is extremely confidential, never disclosed to the public, and  
9 protected stringently within Samsung. The amount it costs Samsung to make a product per unit  
10 and how much each product line has earned after expenses is far more sensitive and confidential  
11 than company-wide financials because it tells competitors what is the lowest price that Samsung  
12 could charge for a particular product and still make a profit. Armed with that information, a  
13 competitor can charge a lower price and undercut Samsung’s sales. The information Samsung  
14 seeks to seal provides all competitors with a playbook for how to out-price Samsung on at least 32  
15 different product lines. Per product profits inform competitors which products are performing  
16 best and worst, allowing competitors to target such product lines specifically in its advertising  
17 campaigns and marketing strategies. Because of the competitive harm to Samsung from its  
18 disclosure, this information is not just exceptionally sensitive, it is among the most confidential  
19 and valuable information that Samsung possesses.

20 The Ninth Circuit has held that preventing court files from “becom[ing] a vehicle for  
21 improper purposes,” is a compelling reason “sufficient to outweigh the public’s interest in  
22 disclosure.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006)  
23 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). District courts in the  
24 Ninth Circuit have recognized that the costs of goods sold and detailed revenue and profit  
25 information present a strong danger of improper use by the company’s competitors, and may be  
26 sealed under the heightened “compelling reasons” standard.

27 For example, the Southern District of California has held that revenues per product,  
28 revenue reductions, merchandise costs, royalty costs, promotional costs, personnel costs, and costs

1 of goods sold are sealable when a company’s business competitors could use the information to  
2 replicate the company’s business practices. *See Bauer Bros. LLC v. Nike, Inc.*, No. 09cv500–  
3 WQH–BGS, 2012 WL 1899838, at \*3-4 (S.D. Cal. May 24, 2012) (sealing deposition testimony  
4 and documents containing cost analysis relating to sales, advertising and marketing, product  
5 development, and profits: “the financial data sought to be sealed by Nike could be used for  
6 improper purposes for Nike’s business competitors, as it includes . . . business sales and  
7 accounting data . . . and costs analysis”); *see also Bean v. John Wiley & Sons, Inc.*, No. CV 11–  
8 08028–PCT–FJM, 2012 WL 1078662, at \*6-7 (D. Ariz. Mar. 30, 2012) (“precise revenue  
9 information results” and “exact sales and production numbers” which could be used by  
10 competitors to calibrate their pricing and distribution methods to undercut defendant also provide  
11 compelling reasons for sealing) (sealing charts summarizing defendant’s sales and revenue figures  
12 broken out by product); *TriQuint Semiconductor v. Avago Techs., Ltd.*, Case No. CV 09-1531-  
13 PHX-JAT, 2011 U.S. Dist. LEXIS 143942, at \*10-12 (D. Az. Dec. 13, 2011) (documents showing  
14 the volume of the party’s sales, market analysis, capital expenditures, cost, and manufacturing  
15 capacity met the “compelling reasons” standard for sealing).

16 Public disclosure of Samsung’s per unit and per product cost and profit information  
17 presents the same dangers. Information showing the exact costs of components and  
18 manufacturing processes of Samsung’s products are subject to the highest level of protection  
19 within Samsung. (Decl. of GiHo Ro at ¶¶ 3-5.) Information detailing products’ precise success  
20 in the market are similarly among the most stringently protected at Samsung. (Decl. of GiHo Ro  
21 at ¶¶ 3-5.) This information has never been disclosed to the public and is kept in the strictest  
22 confidence within Samsung.<sup>1</sup> (Decl. of GiHo Ro at ¶ 4.) *See Bean*, 2012 WL 1078662, at \*6-7

23

24

25 <sup>1</sup> Samsung takes extraordinary steps to maintain the secrecy of its confidential information.  
26 Samsung instructs its employees to keep hard copies of business documents in secure locations,  
27 hires private security forces to monitor its facilities, asks each employee to walk through a metal  
28 detector when exiting its offices, and uses special paper that is capable of triggering the metal  
detectors if a print-out is carried outside its offices in Korea. (Dkt. 987-47, Declaration of Han-  
Yeol Ryu, at ¶¶ 12-14.)

1 (finding additional justification to seal “information . . . kept confidential not only from the public,  
2 but also from [defendant’s] own employees”).

3 Samsung offers a broad range of mobile devices targeted at different subsets of the broader  
4 market. Release of the specific type of detailed and confidential financial data for which limited  
5 sealing is requested – including especially cost data – could be devastating to Samsung as it could  
6 allow competitors to undercut Samsung’s pricing or gain leverage against Samsung in business  
7 and supply agreement negotiations, or engage in a variety of other behaviors that would damage  
8 Samsung’s ability to compete. (Decl. of GiHo Ro at ¶¶ 6-8, 22, 13, 15, 17-20, 22-26.)

9 Compelling reasons exist to seal the portions of the documents identified in Table B to Exhibit 1.

10 **Samsung’s sensitive cost and profit information would not assist the public’s**  
11 **understanding of the Motions on file**

12 Samsung proposes to leave unsealed the material that the public has the greatest interest in  
13 seeing, leaving most briefs, expert reports, and declarations unredacted. Samsung does not seek  
14 to conceal the parties’ arguments, which will aid the public in understanding the judicial process.  
15 Rather, Samsung seeks to seal material that is highly specific, going well beyond what would aid  
16 the public in understanding the parties’ positions and the judicial process. *See, e.g. Richardson v.*  
17 *Mylan Inc.*, Case No. 09-CV-1041-JM (WVG), 2011 U.S. Dist. LEXIS 23969, at \*7-8 (S.D. Cal.  
18 Mar. 9, 2011) (information “of comparatively little value to the general public in terms of  
19 enhancing its understanding of the judicial process” sealable) (internal quotation omitted);  
20 *Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-07-06053 EDL, 2010 U.S. Dist. LEXIS  
21 21721, at \*13-14 (N.D. Cal. Mar. 10, 2010) (material that would “do little to aid the public’s  
22 understanding of the judicial process, but have the potential to cause significant harm” to one of  
23 the parties sealable).

24 The public will be able adequately to understand the rulings of the Court and the positions  
25 of the parties from the material available publicly available. As in *Network Appliance*, the  
26 detailed per-unit and product cost and profit data that Samsung seeks to seal would “do little to aid  
27 the public’s understanding of the judicial process, but have the potential to cause significant harm  
28 to [Samsung’s] competitive and financial position within its industry.” *Network Appliance*, 2010

1 U.S. Dist. LEXIS 21721, at \*13-14. Samsung's detailed cost, product line information, and profit  
2 margin data is not germane to the issues in litigation, and they provide a level of detail far beyond  
3 what is necessary to understand any of the motions subject to the Court's July 17, 2012 Order.

4 **Conclusion**

5 Because compelling reasons in favor of secrecy exist, Samsung respectfully requests the  
6 Court seal the documents and portions of documents as identified in Table B of Exhibit 1.  
7 Pursuant to General Order No. 62, Samsung's entire filing will be lodged with the Court for *in*  
8 *camera review* and served on all parties. Proposed redacted versions of documents have been  
9 filed concurrently with this motion as appropriate. (*See Decl. of Prashanth Chennakesavan.*)

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11  
12 DATED: July 30, 2012

Respectfully submitted,  
  
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