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7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 San Jose Division

11 APPLE INC., a California corporation,

12 Plaintiff,

13 vs.

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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No.: 11-cv-01846-LHK (PSG)

**NON-PARTY SIEMENS AG'S
 ADMINISTRATIVE MOTION TO SEAL**

Honorable Lucy H. Koh

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 20 Pursuant to Civil L.R. 7-11 and 79-5(c), and the Court's Order of July 23, 2012 (Docket No.
 21 1288), non-party Siemens AG ("Siemens") respectfully submits this administrative motion for an
 22 order to seal portions of a single exhibit – Trial Exhibit 77 – that contain highly confidential and
 23 extremely sensitive business information of Siemens' relating to the financial terms of a license
 24 agreement with Samsung Electronics Co., LTD.

25 **Request for Relief**

26 Siemens seeks an order sealing the royalty rates, payment terms and consideration,
 27 technological scope, and duration of its Patent License Agreement with Samsung ("the Agreement")
 28

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1 set forth in Trial Exhibit 77. As the Court explained during its Friday, July 27, 2012 hearing,
2 confidential terms in a patent license agreement are inherently sealable under *Electronic Arts, Inc. v.*
3 *U.S. District Court for the Northern District of California*, 298 Fed. Appx. 568, 569 (9th Cir. 2008)
4 (“E.A.”). [Exh. C (Transcript Excerpt) p. 9:8-17.] Siemens’ narrowly tailored request to seal is
5 grounded in both the Court’s reasoning during the hearing and its own compelling reasons to keep
6 the confidential terms of the Agreement from unfettered public view.

7 **Background Facts**

8 On July 21, 2012, trial counsel for Samsung informed Siemens that Samsung intended to use
9 the Agreement and a summary of its key terms as Trial Exhibit 77. This was the first time that
10 Siemens had any notice that Samsung intended to use Siemens’ highly confidential information at
11 trial. Trial counsel for Samsung also told Siemens that “Samsung has not identified any compelling
12 reasons” to request sealing the Agreement and summary. [Bovich Decl. ¶2, Exh. A.] Over the past
13 week, including on Saturday and Sunday, Siemens has attempted to reach an agreement with
14 Samsung’s trial counsel to present a redacted version of the Agreement and the summary to the jury
15 and the Court. On Saturday, Siemens asked Samsung to agree to submit redacted versions of the
16 Agreement and the summary for consideration by the Court and/or jury, to avoid burdening the
17 Court with this issue during trial. This would have protected Siemens’ interest by preventing the
18 disclosure of Siemens’ highly sensitive licensing terms. It also would have mooted the need for a
19 separate motion to seal by Siemens. Trial counsel for Samsung, though, refused this arrangement
20 because Samsung did want to take on the burden of treating Siemens differently from other
21 intervening non-parties or of resubmitting Trial Exhibit 77 with the appropriate redactions. [Bovich
22 Decl. ¶¶ 3-5] Without adequate assurances that party Samsung would act to protect the highly
23 confidential license terms, non-party Siemens was forced to undertake the cost and burden of filing a
24 separate administrative motion to seal at its own expense and on very short notice.

25 **There Are Compelling Reasons to Grant Siemens’ Proposed Order to Seal**

26 Siemens has submitted redacted versions of Trial Exhibit 77, consisting of the Agreement
27 and Samsung’s summary of the Agreement with this Motion to Seal (Exhibits A and B,
28 respectively). The redacted information relates to the royalty rates, other consideration terms,

1 technological scope, and duration of the Agreement. This information is extremely sensitive to non-
2 party Siemens. Siemens owns one of the largest and most important patent portfolios in the world.
3 To date, Siemens holds approximately 58,000 patents worldwide. The protection, utilization, and
4 expansion of Siemens' intellectual property rights are vital to Siemens' success. Siemens is in
5 constant negotiations with multiple companies regarding patent licenses, including the technology at
6 issue in the Agreement. Siemens' ability to negotiate these licenses on competitive terms would be
7 severely hampered if the confidential terms of its existing license agreements were made public.
8 This is especially true where, as in the Agreement here, the confidential terms relate a license
9 involving unexpired patents or patents for which there remains an enforceable term, the monetary
10 consideration paid for the license rights granted, and/or the technological scope of the license.
11 [Nuzzi Decl. ¶¶6-7.] Siemens would thus be severely harmed should the information contained in
12 Trial Exhibit 77 become public without redactions. [*Id.* ¶ 8.]

13 The information that Siemens seeks to have sealed more than meets the "compelling reasons"
14 standard of the Ninth Circuit. "[P]ricing terms, royalty rates and guaranteed minimum payment
15 terms" found in licensing agreements "plainly fall[] within the definition of 'trade secrets.'" *E.A.*,
16 *supra*, 298 F. App'x at 569; *see also Powertech Tec., Inc., v. Tessera, Inc.*, No. C 11-6121 CW, 2012
17 U.S. Dist. LEXIS 75831, at *5 (N.D. Cal. May 31, 2012) (compelling reasons to seal license
18 agreement). Moreover, there is very little public interest in knowing the specific licenses and
19 agreements that Samsung entered into, and disclosing the information would risk substantial
20 competitive harm to non-party Siemens. *Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-
21 07-06053 EDL, 2010 U.S. Dist. LEXIS 21721, at *7 (N.D. Cal. Mar. 10, 2010) (material that would
22 subject third parties to competitive harm sealable).

23 Indeed, this Court explained that this type of information meets the compelling reasons
24 standard for sealing in this case as recently as Friday, July 27, 2012, when it stated:

25 THE COURT: BASED ON THE NINTH CIRCUIT'S DECISION IN
26 ELECTRONIC ARTS, PRICING, ROYALTY RATES, MINIMUM PAYMENT
27 TERMS OF LICENSING AGREEMENTS WILL BE SEALABLE. AND I THINK
28 TO DO OTHERWISE GOT THE DISTRICT JUDGE REVERSED, SO I'M GOING

1 TO FOLLOW THE NINTH CIRCUIT PRECEDENT ON THAT. NOW, THE
2 NINTH CIRCUIT DECISION DID NOT ADDRESS THE DURATION OF THE
3 LICENSE, BUT I WILL ALLOW THAT ALSO TO BE SEALED. [Exh. C
4 (Transcript Excerpt) p. 9:8-17.]

5 During the same hearing, the Court also explained that it would consider who the request was
6 coming from when considering highly confidential information of non-parties who did not
7 voluntarily initiate this litigation:

8 THE COURT: SO AS FAR AS THE THIRD PARTIES ARE CONCERNED,
9 YOUR REQUEST TO PROTECT THOSE, YOU KNOW, ROYALTY RATE AND
10 THE NO PAYMENT TERM, COMPENSATION TERM, HOWEVER IT'S
11 STRUCTURED AND THE DURATION PRICING, THAT'S FINE. [Exh. C
12 (Transcript Excerpt) p.27:15-19.]

13 The relief requested in this motion is narrowly tailored to protect only non-party Siemens'
14 extremely sensitive, competitive business information. Granting this motion will not impede the
15 public's ability to understand the substantive questions in this case. As a result, Siemens
16 respectfully requests that the Court grant this motion, accept under seal unredacted versions of the
17 Agreement and summary in Trial Exhibit 77, and allow only the redacted versions of the same to be
18 used in a matter that would render them to become public information.

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DATED this the 30th day of July, 2012.

/s/ John P. Bovich

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