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 QUALCOMM INCORPORATED

11 UNITED STATES DISTRICT COURT,
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14 APPLE INC., a California corporation,,
 15

16 Plaintiffs,

17 vs.

18 SAMSUNG ELECTRONICS CO., LTD., a
 Korean corporation; SAMSUNG
 ELECTRONICS AMERICA, INC., a New
 19 York corporation; and SAMSUNG
 TELECOMMUNICATIONS AMERICA, LLC,
 20 a Delaware limited liability company,

21 Defendants.

Case No. 11-CV-01846-LHK

**NON-PARTY QUALCOMM
 INCORPORATED'S REPLY TO
 THIRD PARTY REUTERS
 AMERICA LLC'S OPPOSITION TO
 MOTIONS TO SEAL TRIAL AND
 PRETRIAL EVIDENCE**

23 Reuters' generic argument in favor of forced disclosure of all terms of licensing
 24 agreements rests on (a) the non-sequitur that "If there is a public interest in understanding
 25 how our patent system works," then license terms should be disclosed, and (b) the truism
 26 that disclosure "would increase everyone's access to information". (Reuters Opp'n at 18.)
 27 So it would, but the law recognizes that that is not always a good or fair result. Reuters
 28 cites no law, and instead invites the Court to rely on broad economic theories and policy

1 arguments to compel disclosure *even if* that disclosure will hurt the competitive and
2 commercial interests of non-parties—innocent bystanders—to the litigation. (*Id.* at 19.)
3 We believe that the relevant facts and law have been adequately laid out in the opening
4 papers of Qualcomm and other affected non-parties, and will not revisit those issues.

5 However, Reuters also asserts that Qualcomm’s motion to seal is “moot” “because
6 the licensing terms involved were disclosed in [its] initial filings”. (*Id.* at 19.) It is correct
7 that Qualcomm’s motion was initially in error not filed under seal. That, however, has
8 been corrected: following the proper procedure, at the earliest possible moment on July
9 30, Qualcomm notified the ECF HelpDesk for the Northern District of California that
10 Attachment 2 had been filed incorrectly. Following the District’s published procedures,
11 Docket Item 1394 was immediately locked, and Qualcomm filed an Administrative Motion
12 to Remove Incorrectly Filed Document on that same date, which is currently pending. In
13 short, Qualcomm’s confidential information is not now publicly available through this
14 Court’s records or on PACER.

15 As the very existence of this Court’s procedure for removing incorrectly filed
16 documents from public access reflects, confidentiality is not a black and white, once lost,
17 never regained matter; there are degrees of accessibility. It is true that Reuters sent out a
18 very brief wire report containing some of Qualcomm’s inadvertently disclosed confidential
19 information on Monday, July 30, even after the document had been removed from public
20 access on PACER. However, as the Court is aware, license agreements may remain in
21 effect for many years. Five years from now, a competitor or licensee seeking to gain an
22 advantage by obtaining otherwise confidential information about Qualcomm’s license
23 terms with Samsung may or may not stumble across that transient and by then ancient-
24 history Reuters wire report; they are almost certain to look to and find the docket of this
25 extremely high profile litigation. In other words, despite the inadvertent disclosure,
26 sealing Qualcomm’s confidential information in this Court’s record still matters in the real
27 world.

28 For this reason, Qualcomm’s motion is not moot, and Qualcomm respectfully

1 requests that the Court order the sealing of documents disclosing the financial details of its
2 licensing agreements with Samsung, as set forth in more detail in its opening brief.

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4 Dated: August 3, 2012

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