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 14 AMERICA, INC. and SAMSUNG  
 TELECOMMUNICATIONS AMERICA, LLC  
 15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

21 SAMSUNG ELECTRONICS CO., LTD., a  
 Korean business entity; SAMSUNG  
 22 ELECTRONICS AMERICA, INC., a New  
 York corporation; SAMSUNG  
 23 TELECOMMUNICATIONS AMERICA,  
 LLC, a Delaware limited liability company,

24 Defendants.  
 25

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S MOTION FOR LEAVE TO  
 FILE MOTION FOR  
 RECONSIDERATION**

26  
 27  
 28

1 **NOTICE OF MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** on December 21, 2011, Defendants Samsung  
4 Electronics Co. Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications  
5 America, LLC (collectively, “Samsung”) will move for leave to file a motion for reconsideration  
6 of this Court’s December 16, 2011 Order (“Order”) on Apple’s unopposed motion. This motion  
7 will be based on this Notice of Motion and Motion for Leave to File a Motion for Reconsideration  
8 of Order Granting In Part and Denying In Part Apple’s Motion to Seal, the Memorandum of Points  
9 and Authorities, the Declaration of Hankil Kang in Support of the Motion for Leave, the Proposed  
10 Order, and the files and records in this matter and any oral argument that the Court may hear.

11  
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 Pursuant to Civil Local Rule 7-9, Defendant Samsung respectfully requests this Court  
14 grant Samsung leave to file a motion for reconsideration of the Court’s December 16, 2011 Order  
15 (“Order”) to the extent it denied Apple’s motion to seal Exhibit E of the Declaration of Minn  
16 Chung. Samsung is entitled to leave to file a motion for reconsideration because it is unclear  
17 from the Court’s Order granting in part and denying in part Apple’s Unopposed Administrative  
18 Motion to File Apple’s Motion to Augment Record and Supporting Documents Under Seal (Dkt.  
19 No. 298) whether the Court considered the fact that Exhibit E of the Declaration of Minn Chung  
20 In Support of Apple’s Motion to Augment Record (“Exhibit E”) reveals Samsung’s design  
21 evaluation strategy and the results of Samsung’s significant investment in consumer research.  
22 While the Declaration of Rosa Kim (the “Kim Declaration”) generally discusses the contents of  
23 Exhibit E, the Declaration of Hankil Kang (the “Kang Declaration”), submitted herewith, provides  
24 additional details behind the creation and information of Exhibit E. These Declarations provide  
25 information demonstrating that Exhibit E is sealable pursuant to Local Rule 79-5 due to the  
26 competitive harm that would be caused by its disclosure. Because the Kim and Kang  
27 Declarations satisfy the requirements of Local Rule 79-5, and because it is unclear from the  
28 Court’s ruling on Apple’s motion whether it considered the aspects of Exhibit E that include

1 Samsung's consumer research strategy and the results of its consumer research, as well as legal  
2 authority not presented in Apple's motion that address the confidential nature of Samsung's  
3 information, leave to seek reconsideration of the Order is appropriate. (See L.R. 7-9.)

#### 4 **BACKGROUND**

5 On October 11, 2011, Plaintiff Apple Inc. ("Apple") filed an Unopposed Administrative  
6 Motion to File Apple's Motion to Augment Record and Supporting Documents Under Seal (Dkt.  
7 No. 298). Samsung thereafter filed the Declaration of Rosa Kim in Support of Sealing Apple's  
8 Motion to Augment Record, the Declaration of Minn Chung and Exhibits A-E thereto (Dkt. No.  
9 458). Samsung did not submit any briefing regarding Apple's unopposed motion. On  
10 December 16, 2011, the Court granted Apple's motion as to Exhibits A-D of the Chung  
11 Declaration (Dkt. No. 510). However, the Court denied Apple's request to file Exhibit E under  
12 seal, and for that reason also denied Apple's request to file its Motion to Augment Record under  
13 seal.

#### 14 **ARGUMENT**

15 Local Rule 79-5(a) permits a document to be filed under seal "where [the] document, or  
16 portions thereof, is privileged or protectable as a trade secret or otherwise entitled to protection  
17 under the law." A document is "sealable" under Rule 79-5(a) if the designating party can  
18 demonstrate that "disclosure would cause significant harm to its competitive and financial  
19 position" through "specific demonstrations of fact." *SuccessFactors, Inc. v. Softscape, Inc.*, 2008  
20 WL 3876472 at \*1 (N.D. Cal. Aug. 19. 2008).

21 The Kim Declaration generally describes the confidential and proprietary nature of the  
22 information at issue in Exhibit E and the type of competitive harm that would result from its  
23 public disclosure. (Kim Decl. ¶ 2.) As further described in the Kang Declaration, Exhibit E  
24 reveals the methodology Samsung uses in conducting qualitative consumer research in its efforts  
25 to elicit and understand consumer perceptions and preferences and what competitive analyses  
26 Samsung conducts in connection with its design and product evaluation processes. (Kang Decl.  
27 ¶¶ 2-5.) Although some images may have been shown to consumers in the course of the survey  
28 research, the document is confidential because the significance of those images and the strategies

1 behind the use and analysis of the consumers’ feedback regarding those images have not been  
2 revealed to consumers. Samsung has expended considerable sums to develop these techniques  
3 and to keep them secret, and the confidential and commercially sensitive nature of this information  
4 will be destroyed unless the Court reconsiders its decision not to permit the filing of Exhibit E  
5 under seal. (*Id.*) Samsung’s efforts in conducting this research will now accrue to the benefit of  
6 Samsung’s competitors unless this document is filed under seal.

7 In addition to revealing Samsung’s consumer research methodology, Exhibit E discusses  
8 the study’s key findings regarding design preferences relating to size, shape, color, and  
9 configuration of smartphone keypads. The study also contains confidential information from the  
10 files of Samsung’s designers regarding the design of Samsung products, including depictions of  
11 prototypes that have never been released in the market or disclosed to the public. (*Id.*) If  
12 Exhibit E is not filed under seal, Samsung will lose the valuable opportunity to further develop  
13 these designs and incorporate them into future products, and worse, these designs may be hijacked  
14 by competitors.

15 Unsurprisingly, the Court’s Order does not address legal authority that Apple did not raise  
16 in its motion, but that supports the sealing of Samsung’s confidential information. *E.g., Whyte v.*  
17 *Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1456 (2002) (“the results of confidential marketing  
18 research; advertising and marketing strategy, plans, and techniques . . . constitute trade  
19 secrets[.]”); *SI Handling Sys., Inc. v. Heisley*, 753 F.2d 1244, 1259 (3rd Cir. 1985) (“Where  
20 market research explores the needs of numerous, diverse buyers, the resulting profile is  
21 information that can only be obtained by others who undertake the same study.”); *Compuware*  
22 *Corp. v. IBM Corp.*, 2003 WL 23212863 at \*7 (E.D. Mich. 2003) (“The aggregation and  
23 distillation of the needs and desires of numerous customers is protectable” under the Uniform  
24 Trade Secrets Act.) In addition, the Kang Declaration provides additional factual details  
25 regarding Exhibit E’s confidentiality, and demonstrates that Samsung does protect the information  
26 revealed in Exhibit E as a trade secret. The Kim and Kang Declarations contain material facts  
27 which, if considered, tip the balance in favor of granting Apple’s motion to file Exhibit E under  
28 seal. (*See* Civ. L.R. 7-9(b)(3)). Because it is unclear whether and to what extent the Court

1 considered the Kim Declaration and because the Court did not have the additional details provided  
2 in the Kang Declaration and the legal authorities cited herein before issuing its Order, leave to file  
3 a motion for reconsideration is appropriate.

4 **CONCLUSION**

5 For the foregoing reasons, Samsung respectfully requests that this Court grant Samsung  
6 leave to file a motion to reconsider its Order denying Apple's administrative motion to file Exhibit  
7 E under seal.

8  
9 DATED: December 21, 2011

QUINN EMANUEL URQUHART &  
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