

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
 Charles K. Verhoeven (Cal. Bar No. 170151)  
 2 charlesverhoeven@quinnemanuel.com  
 50 California Street, 22nd Floor  
 3 San Francisco, California 94111  
 Telephone: (415) 875-6600  
 4 Facsimile: (415) 875-6700

5 Kevin P.B. Johnson (Cal. Bar No. 177129)  
 kevinjohnson@quinnemanuel.com  
 6 Victoria F. Maroulis (Cal. Bar No. 202603)  
 victoriamaroulis@quinnemanuel.com  
 7 555 Twin Dolphin Drive 5th Floor  
 Redwood Shores, California 94065  
 8 Telephone: (650) 801-5000  
 Facsimile: (650) 801-5100

9 Michael T. Zeller (Cal. Bar No. 196417)  
 10 michaelzeller@quinnemanuel.com  
 865 S. Figueroa St., 10th Floor  
 11 Los Angeles, California 90017  
 Telephone: (213) 443-3000  
 12 Facsimile: (213) 443-3100

13 Attorneys for SAMSUNG ELECTRONICS  
 CO., LTD., SAMSUNG ELECTRONICS  
 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 23, 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 20, 2011 Order (“Order”). This motion will be based on this Notice of  
7 Motion and Motion for Leave to File a Motion for Reconsideration of Order Granting In Part and  
8 Denying In Part Samsung’s Motion to Seal, the Memorandum of Points and Authorities, the  
9 Declaration of Derrick Robinson in Support of the Motion for Leave, the Proposed Order, and the  
10 files and records in this matter and any oral argument that the Court may hear.<sup>1</sup>

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 partial reconsideration of the Court’s December 20, 2011  
15 Order (“Order”). Defendant is entitled to leave to file a motion for partial reconsideration  
16 because it is unclear from the Court’s Order granting in part and denying in part Samsung’s  
17 Motion to File Documents Under Seal (Dkt. No. 515) whether the Court considered the fact that  
18 Exhibit V of the Declaration of Mark Tung In Support of Samsung’s Notice of Lodging of  
19 Materials In Support of Samsung’s Opposition to Apple’s Motion for Preliminary Injunction  
20 (“Exhibit V”) reveals third-party information that is the subject of a nondisclosure agreement  
21 between Samsung and Best Buy, Inc. (“Best Buy”). While the Declaration of Melissa N. Chan  
22 (the “Chan Declaration”) generally discusses the contents of Exhibit V, the Declaration of Derrick  
23 Robinson (the “Robinson Declaration”), submitted herewith, provides additional details about the  
24 nature of the confidential information contained therein. These Declarations provide information

25  
26 \_\_\_\_\_  
27 <sup>1</sup> As of the time of filing this motion, Samsung’s counsel was unable to confirm Apple’s  
28 opposition or non-opposition to Samsung’s motion for leave. Apple did not file an opposition to  
Samsung’s original Administrative Motion to File Under Seal (Dkt. No. 456).

1 demonstrating that Exhibit V is sealable pursuant to Local Rule 79-5 due to the third-party  
2 confidential information that would be revealed with its disclosure. Because the Chan and  
3 Robinson Declarations satisfy the requirements of Local Rule 79-5, and because it is unclear from  
4 the Court’s ruling whether it considered that the information in Exhibit V would cause harm to a  
5 third-party in issuing its Order, leave to seek reconsideration of the Order is appropriate. (*See*  
6 L.R. 7-9.)

7  
**BACKGROUND**

8 On December 7, 2011, Samsung filed and Administrative Motion to File Documents  
9 Under Seal, supported by the Chan Declaration. (Dkt. No. 456.) On December 20, 2011, the  
10 Court granted Samsung’s motion as to Exhibit T of the Tung Declaration. (*See* Dkt. No. 515.)  
11 However, the Court denied Samsung’s request to file other exhibits to the Tung Declaration under  
12 seal, including Exhibit V.

13  
**ARGUMENT**

14 Local Rule 79-5(a) permits a document to be filed under seal “where [the] document, or  
15 portions thereof, is privileged or protectable as a trade secret or otherwise entitled to protection  
16 under the law.” A showing of good cause will suffice to justify sealing material attached to non-  
17 dispositive motions. *Prosurance Group, Inc. v. Liberty Mut. Group, Inc.*, 2011 WL 704456  
18 (N.D. Cal., Feb. 18, 2011) (quoting *Kamakana v. City and County of Honolulu*, 447 F.3d 1172,  
19 1178 (9th Cir. 2006)).

20 The Chan Declaration generally describes the confidential nature of the information at  
21 issue in Exhibit V. As set forth in the Chan Declaration, Exhibit V consists of excerpts from the  
22 deposition transcript of Mr. Justin Denison, Samsung’s 30(b)(6) witness. (Chan Decl. ¶ 7.) Mr.  
23 Denison’s testimony relates to confidential third-party information about the relationship between  
24 Samsung and Best Buy, a nonparty to this action, and a marketing promotion involving both  
25 parties. As further described in the Robinson Declaration, Samsung and Best Buy have entered  
26 into an agreement with nondisclosure provisions regarding the details of their business  
27 relationship, and certain information regarding the marketing promotion is subject to those  
28 nondisclosure provisions. (Robinson Decl. ¶¶ 3-4). While the promotion itself was obviously

1 public, the details of the origination of such promotion are not public. Samsung accordingly  
2 designated it as HIGHLY CONFIDENTIAL—ATTORNEY’S EYES ONLY. (*Id.*) Disclosure  
3 of the information contained in Exhibit V could therefore harm the ongoing business relationship  
4 between Samsung and Best Buy, resulting in considerable financial harm to Samsung and  
5 potentially to Best Buy.

6 While the Court notes the Chan Declaration, the Court’s Order does not address the  
7 confidentiality concerns described therein or the potential harm that might result to nonparties; the  
8 Order states only that Exhibit V “appear[s] to contain ether public information, or do[es] no  
9 contain privileged or otherwise protectable information.” However, the Robinson Declaration  
10 provides additional details regarding Exhibit V’s confidentiality, and demonstrates that Samsung  
11 is committed to protecting the third-party information revealed in Exhibit V. The Chan and  
12 Robinson Declarations contain material facts which, if considered, tip the balance in favor of  
13 granting Samsung’s motion to file Exhibit V under seal. (*See* Civ. L.R. 7-9(b)(3).) Because it  
14 is unclear whether and to what extent the Court considered the Chan Declaration and because the  
15 Court did not have the additional details provided in the Robinson Declaration prior to the  
16 issuance of its Order, leave to file a motion for reconsideration is appropriate.

17 **CONCLUSION**

18 For the foregoing reasons, Samsung respectfully requests that this Court grant Samsung  
19 leave to file a motion to reconsider its Order denying Samsung’s administrative motion to file  
20 Exhibit V under seal.

21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: December 23, 2011

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Victoria Maroulis

Charles K. Verhoeven

Kevin P.B. Johnson

Victoria F. Maroulis

Michael T. Zeller

Attorneys for SAMSUNG ELECTRONICS CO.,

LTD., SAMSUNG ELECTRONICS AMERICA,

INC., and SAMSUNG

TELECOMMUNICATIONS AMERICA, LLC