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 AMERICA, INC. and SAMSUNG  
 15 TELECOMMUNICATIONS AMERICA, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

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

CASE NO. 11-cv-01846-LHK

**STIPULATED MODIFICATION TO PATENT L.R. 2-2 INTERIM MODEL PROTECTIVE ORDER FOR PURPOSES OF EXPEDITED DISCOVERY**

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WHEREAS, the Court has ordered certain limited discovery to proceed in this action prior to the conference of the parties provided for by Fed. R. Civ. P. 26(f) (“Expedited Discovery”) (see Order Granting Limited Expedited Discovery (D.N. 52);

WHEREAS, Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, and Apple Inc. (collectively, the “Parties”) agree that the terms of the Patent Local Rule 2-2 Interim Model Protective Order (“Interim Protective Order”) (available on the Court’s website at <http://www.cand.uscourts.gov/stipprotectorder>), as modified herein and by the Court’s Order Granting Limited Expedited Discovery, shall govern how the Parties shall treat documents, tangible materials, and other information produced in this action by any Party or Third Party as Expedited Discovery;

WHEREAS, the Parties desire to institute an additional confidentiality designation to address the particular facts and circumstances of this case and to afford the most stringent security for each Party’s most valuable and sensitive information and tangible things that are produced during Expedited Discovery;

WHEREAS, the Parties desire that such confidentiality designation shall be “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”;

WHEREAS, the Parties wish to revise Section 8 of the Interim Protective Order (entitled “PROSECUTION BAR”) so that it also addresses the particular facts and circumstances of this case;

Now, therefore, the Parties by and through their counsel hereby stipulate to and petition the Court to modify the Interim Protective Order for the purposes of Expedited Discovery in this case as follows:

1 [New] 1.1 Limitation on Scope. This Stipulated Modification to the Patent  
2 Local Rule 2-2 Interim Model Protective Order shall apply exclusively to Samsung’s production  
3 of expedited discovery pursuant to the Court’s Order Granting Limited Expedited Discovery (D.N.  
4 52). For avoidance of doubt, this Stipulation shall not apply to any other production of  
5 discovery.

6  
7 [Deleted] 2.4 — ~~Designated House Counsel: House Counsel who seek access to~~  
8 ~~“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.~~

9  
10 [Amended] 2.5 Designating Party: a Party or Non-Party that designates information  
11 or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,”  
12 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY,” or “HIGHLY  
13 CONFIDENTIAL – SOURCE CODE.”

14  
15 [Deleted] 2.8 — ~~“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”~~  
16 ~~Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of~~  
17 ~~which to another Party or Non-Party would create a substantial risk of serious harm that could not~~  
18 ~~be avoided by less restrictive means.~~

19  
20 [New] 2.8.1 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES  
21 ONLY” Information or Items: “Confidential Information or Items,” disclosure of which to  
22 another Party, Non-Party or that Party or Non-Party’s House Counsel, would create a substantial  
23 risk of serious harm that could not be avoided by less restrictive means.

24  
25 [Amended] 2.16 Protected Material: any Disclosure or Discovery Material that is  
26 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S  
27 EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 [Amended] 5.2 Manner and Timing of Designations. Except as otherwise  
2 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this  
4 Order must be clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but  
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
8 affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S  
9 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains  
10 protected material. If only a portion or portions of the material on a page qualifies for protection,  
11 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
12 markings in the margins) and must specify, for each portion, the level of protection being asserted.

13 A Party or Non-Party that makes original documents or materials available for inspection  
14 need not designate them for protection until after the inspecting Party has indicated which material  
15 it would like copied and produced. During the inspection and before the designation, all of the  
16 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – OUTSIDE  
17 COUNSEL’S EYES ONLY.” After the inspecting Party has identified the documents it wants  
18 copied and produced, the Producing Party must determine which documents, or portions thereof,  
19 qualify for protection under this Order. Then, before producing the specified documents, the  
20 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY  
21 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY,” or “HIGHLY CONFIDENTIAL –  
22 SOURCE CODE”) to each page that contains Protected Material. If only a portion or portions of  
23 the material on a page qualifies for protection, the Producing Party also must clearly identify the  
24 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
25 each portion, the level of protection being asserted.

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
27 Designating Party identify on the record, before the close of the deposition, hearing, or other  
28 proceeding, all protected testimony and specify the level of protection being asserted. When it is

1 impractical to identify separately each portion of testimony that is entitled to protection and it  
2 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
3 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
4 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
5 sought and to specify the level of protection being asserted. Only those portions of the testimony  
6 that are appropriately designated for protection within the 21 days shall be covered by the  
7 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at  
8 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
9 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE  
10 COUNSEL’S EYES ONLY.”

11 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or  
12 other proceeding to include Protected Material so that the other parties can ensure that only  
13 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
14 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
15 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
16 – OUTSIDE COUNSEL’S EYES ONLY.”

17 Transcripts containing Protected Material shall have an obvious legend on the title page  
18 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
19 pages (including line numbers as appropriate) that have been designated as Protected Material and  
20 the level of protection being asserted by the Designating Party. The Designating Party shall  
21 inform the court reporter of these requirements. Any transcript that is prepared before the  
22 expiration of a 21-day period for designation shall be treated during that period as if it had been  
23 designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” in its entirety  
24 unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
25 actually designated.

26 (c) for information produced in some form other than documentary and for any other  
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
28 or containers in which the information or item is stored the legend “CONFIDENTIAL,”

1 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY,” or “HIGHLY  
2 CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item  
3 warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
4 portion(s) and specify the level of protection being asserted.

5  
6 [Amended] 7.3 Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE  
7 COUNSEL’S EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information  
8 or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party,  
9 a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL  
10 – OUTSIDE COUNSEL’S EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE”  
11 only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
13 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
14 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
15 attached hereto as Exhibit A;

16 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
17 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
18 and (3) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

19 (c) the court and its personnel;

20 (d) court reporters and their staff, professional jury or trial consultants, and Professional  
21 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

23 (e) the author or recipient of a document containing the information or a custodian or other  
24 person who otherwise possessed or knew the information.

25  
26 [Amended] 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
27 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL –  
28 SOURCE CODE” Information or Items to Experts.

1 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
2 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
3 that has been designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY”  
4 or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make  
5 a written request to the Designating Party that (1) identifies the general categories of “HIGHLY  
6 CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY” or “HIGHLY CONFIDENTIAL –  
7 SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert,  
8 (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3)  
9 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)  
10 identifies each person or entity from whom the Expert has received compensation or funding for  
11 work in his or her areas of expertise or to whom the expert has provided professional services,  
12 including in connection with a litigation, at any time during the preceding five years,<sup>1</sup> and (6)  
13 identifies (by name and number of the case, filing date, and location of court or administrative  
14 agency) any litigation or administrative proceedings in connection with which the Expert has  
15 offered expert testimony, including through a declaration, report, or testimony at a deposition or  
16 trial, during the preceding five years.

17 (b) A Party that makes a request and provides the information specified in the preceding  
18 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,  
19 within 14 days of delivering the request, the Party receives a written objection from the  
20 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

21 (c) A Party that receives a timely written objection must meet and confer with the  
22 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
23 agreement within seven days of the written objection. If no agreement is reached, the Party  
24

25 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a  
26 third-party, then the Expert should provide whatever information the Expert believes can be  
27 disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the  
28 Expert shall be available to meet and confer with the Designating Party regarding any such  
engagement.

1 seeking to make the disclosure the Expert may file a motion as provided in Civil Local Rule 7  
2 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to  
3 do so. Any such motion must describe the circumstances with specificity, set forth in detail the  
4 reasons why disclosure to the Expert is reasonably necessary, assess the risk of harm that the  
5 disclosure would entail, and suggest any additional means that could be used to reduce that risk.  
6 In addition, any such motion must be accompanied by a competent declaration describing the  
7 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and  
8 confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal  
9 to approve the disclosure.

10 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
11 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
12 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

13

14 [Revised] 8. PROSECUTION BAR

15 Absent consent from the Producing Party, any individual who receives or reviews  
16 Protected Material designated as "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES  
17 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE," under this Order shall not,

18 (1) prepare and/or prosecute any patent application (or portion thereof), whether design or  
19 utility, and either in the United States or abroad, relating to telecommunications devices, personal  
20 digital assistants, personal electronics devices, tablet computers, digital music players, methods or  
21 means for interacting with and operating same, and/or software or hardware for same;

22 (2) prepare and/or prosecute any patent claim(s) (or portions thereof), whether as part of a  
23 design or utility patent application, and either in the United States or abroad, relating to  
24 telecommunications devices, personal digital assistants, personal electronics devices, tablet  
25 computers, digital music players, methods or means for interacting with and operating same,  
26 and/or software or hardware for same;

27 (3) provide any advice regarding whether or not to file a patent application relating to  
28 telecommunications devices, personal digital assistants, personal electronics devices, tablet



1 computers, digital music players, methods or means for interacting with and operating same,  
2 and/or software or hardware for same;

3 (4) prepare and/or prosecute any application (or portion thereof) for trademark or trade  
4 dress registration either in the United States Patent and Trademark Office or a foreign equivalent  
5 thereof, relating in any way to telecommunications devices, personal digital assistants, personal  
6 electronics devices, tablet computers, digital music players, or any icons, logos, product  
7 configurations, or methods or means for interacting with and operating same, and/or software or  
8 hardware features of same; or

9 (5) provide any advice regarding whether or not to seek registration of, or to file  
10 applications for trademark or trade dress protection either in the United States or abroad, relating  
11 in any way to telecommunications devices, personal digital assistants, personal electronics  
12 devices, tablet computers, digital music players, or any icons, logos, product configurations, or  
13 methods or means for interacting with and operating same, and/or software or hardware features of  
14 same.

15 For purposes of this section, “prosecution” includes directly or indirectly drafting,  
16 amending, advising, or otherwise affecting the scope or maintenance of patent claims and  
17 trademark or trade dress registrations.<sup>2</sup> This prosecution bar applies to all substantive domestic  
18 and foreign patent and trademark office proceedings, including but not limited to patent and  
19 trademark drafting and prosecution, appeals, reexaminations, reissuances, and oppositions. This  
20 prosecution bar shall begin when access to “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL  
21 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received  
22 by the affected individual and shall end two (2) years after final termination of this action.

23

24 [Amended] 9. SOURCE CODE

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27 <sup>2</sup> Prosecution includes, for example, original prosecution, reissue and reexamination  
28 proceedings.

1 (a) To the extent production of source code becomes necessary in this case, a Producing  
2 Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it  
3 comprises or includes confidential, proprietary or trade secret source code.

4 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
5 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – OUTSIDE  
6 COUNSEL’S EYES ONLY” information, including the Prosecution Bar set forth in Paragraph 8,  
7 and may be disclosed only to the individuals to whom HIGHLY CONFIDENTIAL – OUTSIDE  
8 COUNSEL’S EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4.

9 . . .

10  
11 [Amended] 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
12 PRODUCED IN OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that compels  
14 disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY  
15 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or “HIGHLY CONFIDENTIAL –  
16 SOURCE CODE,” that Party must:

17 (a) promptly notify in writing the Designating Party. Such notification shall include a  
18 copy of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
20 other litigation that some or all of the material covered by the subpoena or order is subject to this  
21 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
23 Designating Party whose Protected Material may be affected.<sup>3</sup>

24  
25  
26 <sup>3</sup> The purpose of imposing these duties is to alert the interested parties to the existence of  
27 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
28 protect its confidentiality interests in the court from which the subpoena or order issued.

1           If the Designating Party timely seeks a protective order, the Party served with the subpoena  
2 or court order shall not produce any information designated in this action as “CONFIDENTIAL,”  
3 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY,” or “HIGHLY  
4 CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the  
5 subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The  
6 Designating Party shall bear the burden and expense of seeking protection in that court of its  
7 confidential material – and nothing in these provisions should be construed as authorizing or  
8 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9

10           [Amended] 11.    A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
11 PRODUCED IN THIS LITIGATION

12           (a) The terms of this Order are applicable to information produced by a Non-Party in this  
13 action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE  
14 COUNSEL EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
15 information produced by Non-Parties in connection with this litigation is protected by the  
16 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
17 prohibiting a Non-Party from seeking additional protections.

18           . . .

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20           IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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1 DATED: June 16, 2011

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

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4

By /s/ Victoria F. Maroulis

Charles K. Verhoeven

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Kevin P.B. Johnson

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Victoria F. Maroulis

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Michael T. Zeller

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Attorneys for SAMSUNG ELECTRONICS

AMERICA, INC., and SAMSUNG

TELECOMMUNICATIONS AMERICA, LLC

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10 DATED: June 16, 2011

MORRISON & FOERSTER LLP

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By /s/ Michael A. Jacobs

Harold J. McElhinny

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Michael A. Jacobs

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Jennifer Lee Taylor

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Jason R. Bartlett

Attorneys for APPLE INC.

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I, Victoria F. Maroulis, am the ECF User whose identification and password are being used to file this document. Pursuant to General Order 45.X.B, I hereby attest that counsel for Apple Inc. has concurred in this filing.

1 **IT IS SO ORDERED.**

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3 Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_

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Honorable Lucy H. Koh

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United States District Judge

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