

United States District Court  
For the Northern District of California

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE, INC., a California corporation,	)	Case No.: 12-CV-00630-LHK
	)	
Plaintiff,	)	ORDER DENYING ADMINISTRATIVE
	)	MOTIONS TO FILE DOCUMENTS
v.	)	UNDER SEAL
	)	
SAMSUNG ELECTRONICS CO., LTD., a	)	(re: dkt. #6, 114, 153, 161, 169, 175, 195,
Korean corporation; SAMSUNG	)	204, 219)
ELECTRONICS AMERICA, INC., a New York	)	
corporation; and SAMSUNG	)	
TELECOMMUNICATIONS AMERICA, LLC,	)	
a Delaware limited liability company,	)	
	)	
Defendants.	)	
	)	

On March 6, 2012, the Court granted Apple’s administrative motion to file under seal portions of Apple’s Motion for a Preliminary Injunction and portions of accompanying declarations and attached exhibits containing confidential, proprietary market research and analysis. *See* ECF Nos. 6 (Apple’s motion), 42 (Sealing Order). Since then, both parties have sought to file copious amounts of documents related to Apple’s Motion for a Preliminary Injunction and Samsung’s subsequent Motion to Stay Pending Appeal. *See* ECF Nos. 114, 153, 161, 169 (Samsung’s administrative motions to file under seal portions of its Opposition to Apple’s Motion for Preliminary Injunction and portions of accompanying declarations and attached exhibits); ECF No. 175 (Apple’s administrative motion to file under seal portions of its Reply in Support of Its Motion

1 for Preliminary Injunction and portions of accompanying declarations and attached exhibits); ECF  
2 No. 204 (Samsung’s administrative motion to file under seal portions of its Brief on Bond and  
3 accompanying declaration); ECF No. 219 (Samsung’s administrative motion to file under seal  
4 portions of its Motion to Stay and Suspend the June 29, 2012 Preliminary Injunction Pending  
5 Appeal or, Alternatively, Pending Decision by Federal Circuit on Stay Pending Appeal, and  
6 accompanying declaration).<sup>1</sup> Each and every one of these motions is briefed under the “good  
7 cause” standard that governs the sealing of documents attached to a non-dispositive motion. *See*  
8 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).

9 Courts have historically recognized a “general right to inspect and copy public records and  
10 documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S.  
11 589, 597 & n. 7 (1978). “Unless a particular court record is one ‘traditionally kept secret,’”<sup>2</sup> courts  
12 generally apply “a ‘strong presumption in favor of access.’” *Kamakana*, 447 F.3d at 1178 (quoting  
13 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Where a party seeks  
14 to file under seal documents attached only to a non-dispositive motion, however, a showing of  
15 “good cause” often outweighs the public’s interest in access, because “the public has less of a need  
16 for access to court records attached only to non-dispositive motions because those documents are  
17 often unrelated, or only tangentially related, to the underlying cause of action.” *Id.* at 1179  
18 (internal quotation marks and citations omitted).

19 By contrast, where a party seeks to file under seal documents attached to a dispositive  
20 motion, the strong presumption of public access can be overcome only by an “articulat[ion of]  
21 compelling reasons supported by specific factual findings,” and the Court must “conscientiously  
22 balance[] the competing interests’ of the public and the party who seeks to keep certain judicial  
23

---

24 <sup>1</sup> Samsung also filed an administrative motion to file under seal the Declaration of Scott L. Watson  
25 in Support of Samsung’s Opposition to Apple’s Motion for Preliminary Injunction (“Watson  
26 Decl.”). *See* ECF No. 195. The Court sustained Apple’s objection to Samsung’s untimely attempt  
27 to supplement the record without leave of the Court. *See* ECF No. 221 at 6. Accordingly,  
28 Samsung’s administrative motion to file the Watson Declaration under seal is DENIED as moot.

<sup>2</sup> The Ninth Circuit has identified two categories of documents that are “traditionally kept secret”:  
(1) grand jury transcripts; and (2) warrant materials in the midst of a pre-indictment investigation.  
*Kamakana*, 447 F.3d at 1178. The documents that the parties here seek to file under seal do not  
fall under either of these two categories.

1 records secret.” *Id.* at 1178-79 (quoting *Foltz*, 331 F.3d at 1135). “A ‘good cause’ showing will  
2 not, without more, satisfy a ‘compelling reasons’ test.” *Id.* at 1180. The Ninth Circuit has  
3 explained that “compelling reasons” that justify sealing court records generally exist “when such  
4 ‘court files might have become a vehicle for improper purposes,’ such as the use of records to  
5 gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.”  
6 *Id.* at 1179 (quoting *Nixon*, 435 U.S. at 598). “The mere fact that the production of records may  
7 lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without  
8 more, compel the court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at 1136). “Unlike private  
9 materials unearthed during discovery, judicial records are public documents almost by definition,  
10 and the public is entitled to access by default. This fact sharply tips the balance in favor of  
11 production when a document, formerly sealed for good cause under Rule 26(c), becomes part of a  
12 judicial record.” *Id.* at 1180 (internal citation omitted).

13 In light of the late stage of the proceedings in the related case involving the same parties,  
14 *Apple v. Samsung*, Case No. 11-CV-01846-LHK (“the 1846 case”), much of the information  
15 previously sealed or that the parties have sought to file under seal is no longer entitled to protection  
16 from public view under either the “good cause” or “compelling reasons” standard. The 1846 case  
17 is set for trial beginning on July 30, 2012. The Court has made clear to the parties in the 1846 case  
18 that all evidence introduced at trial will be open to the public, with the narrow exception of  
19 “exceptionally sensitive information that truly deserves protection.” *Apple v. Samsung*, No. 11-  
20 CV-01846-LHK, at ECF No. 1256 at 3 (quoting *Oracle Am. v. Google, Inc.*, No. 10-CV-03561-  
21 WHA, at ECF No. 540). Furthermore, the Court has already ruled on cross-motions for summary  
22 judgment in the 1846 case and has denied the parties’ various administrative motions to file under  
23 seal documents associated with those cross-motions under the “compelling reasons” standard. *See*  
24 *id.* Thus, much of the evidence that the parties have previously sought to file under seal at earlier  
25 stages of litigation in the 1846 case will now be a matter of public record. The parties themselves  
26 have acknowledged that much of the evidence in the 1846 case and this action is overlapping. *See*  
27 ECF No. 80 at 2-3 (Stipulation and Proposed Order Re Discovery). Indeed, in a joint stipulation  
28 regarding discovery in this action, the parties stipulated that “any document produced or deposition

1 of a party’s witness taken by one of the parties in the 1846 case . . . shall be deemed produced in  
2 the 630 case without new Bates-numbering; any deposition so produced shall be useable in the 630  
3 case as if the deposition were originally noticed and taken in the 630 case;” . . . and “the parties  
4 will work in good faith with third parties that have produced documents in the 1846 case . . . to  
5 address use of those documents in the 630 case on an as requested basis.” *Id.* Once documents and  
6 deposition testimony become part of the public record in the 1846 case, there is no good cause – let  
7 alone compelling reasons – for sealing the same information from public view in this related  
8 action, which involves the same parties, similar products, similar legal theories, and is of similarly  
9 significant interest to the public. Accordingly, any request to seal information that has already  
10 been disclosed in the 1846 case will be denied outright.

11 Furthermore, the related 1846 action has reached a stage of the proceedings where “the  
12 presumption of openness will apply to all documents[,] and only documents of exceptionally  
13 sensitive information that truly deserve protection will be allowed to be redacted or kept from the  
14 public.” *Apple v. Samsung*, No. 11-CV-01846-LHK, at ECF No. 1256 at 3. Although the instant  
15 action has not yet progressed to the same stage of litigation as the 1846 case, as previously noted,  
16 the related nature of the two actions, the overlapping discovery in both cases, and the exceptional  
17 degree of public interest in these two matters counsel in favor of coordinating sealing practices  
18 across both cases. Moreover, although Apple’s motion for preliminary injunction and Samsung’s  
19 motion to stay are non-dispositive, they cannot fairly be characterized as “unrelated, or only  
20 tangentially related, to the underlying cause of action.” *Id.* at 1179. To the contrary, these motions  
21 implicate the very core of Apple’s claims and Apple’s desired relief in bringing suit against  
22 Samsung. As evidenced by the plethora of media and general public scrutiny of the preliminary  
23 injunction proceedings, the public has a significant interest in these court filings, and therefore the  
24 strong presumption of public access applies.

25 In granting Apple’s first request to file documents under seal, the Court applied the “good  
26 cause” standard that governs the sealing of documents attached to a non-dispositive motion. *See*  
27 ECF No. 42 at 1-2. For all the reasons discussed herein, the Court now determines that the  
28 exceptionally strong public interest in the preliminary injunction proceedings in this case merits

1 imposition of the heightened “compelling reasons” standard that governs the sealing of documents  
2 attached to dispositive motions or submitted in trial. *See Kamakana*, 447 F.3d at 1178-79.

3 While much of the information that the parties sought to file under seal in connection with  
4 Apple’s motion for preliminary injunction and Samsung’s motion to stay may be sealable under the  
5 more pliant “good cause” standard, hardly any of it, save for the exception of some limited third-  
6 party source code, satisfies the more stringent “compelling reasons” standard. Moreover, much of  
7 the information may become public in the 1846 trial. Accordingly, the Court reverses its prior  
8 order (ECF No. 42) granting Apple’s motion to seal (ECF No. 6) and now DENIES without  
9 prejudice Apple’s motion for failure to satisfy the “compelling reasons” standard. *See Fed. R. Civ.*  
10 *P. 54(b)*. For the same reason, the parties’ remaining pending motions to seal documents related to  
11 Apple’s motion for preliminary injunction and Samsung’s motion to stay are DENIED without  
12 prejudice. *See ECF Nos. 114, 153, 161, 169, 175, 204, 219*. The parties may file renewed motions  
13 to seal within one week of the date of this Order. Before doing so, the parties shall meet and confer  
14 regarding any documents they seek to file under seal based on a designation of confidentiality by  
15 another party pursuant to Civil Local Rule 79-5(d) and shall endeavor to resolve sealing disputes so  
16 as to minimize the number of sealing requests raised with the Court.

17 **IT IS SO ORDERED.**

18  
19 Dated: July 18, 2012

20   
21 LUCY H. KOH  
22 United States District Judge  
23  
24  
25  
26  
27  
28