

2012-1600, -1606

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

APPLE INC.,

Plaintiff-Appellant,

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC., and
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,

Defendants-Cross Appellants.

Appeals from the United States District Court for the
Northern District of California in case no. 11-CV-1846, Judge Lucy H. Koh.

**PLAINTIFF-APPELLANT APPLE INC.'S EMERGENCY MOTION TO
STAY PENDING RESOLUTION OF APPEAL**

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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4, counsel of record for Plaintiff-Appellant Apple Inc. certifies as follows:

1. The full name of every party represented by us is
Apple Inc.
2. The names of the real parties in interest represented by us are:
Not applicable
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the parties represented by us are:
None.
4. The names of all law firms and the partners or associates that appeared for the parties represented by us in the trial court, or are expected to appear in this Court, are:

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- 2 Joint Motion Regarding Sealing of Trial Exhibits (D.I. 1414)
- 3 Excerpt of July 27, 2012 Hearing Transcript
- 4 Apple's Motion to Seal Confidential Trial Exhibits (D.I. 1495)
- 5 Apple's Motion to Seal Prior Motions and Exhibits Thereto (D.I. 1499)
- 6 Order Granting-in-Part and Denying-in-Part Motions to Seal (D.I. 1649)
- 7 Notice of Appeal (D.I. 1697)
- 8 Apple Inc.'s Motion to Stay Order Denying-in-Part Motions to Seal (D.I. 1696)
- 9 Order Granting in Part and Denying in Part the Parties' Motions to Stay Pending Appeal (D.I. 1754)
- 10 Excerpt of August 15, 2012 Hearing Transcript
- 11 Declaration of Jim Bean in Support of Apple's Motion to Seal Previously Filed Motions and Exhibits Thereto (D.I. 1502)
- 12 Declaration of Gregory Joswiak in Support of Apple's Motion to Seal Trial Exhibits (D.I. 1496)

Pursuant to Federal Rule of Appellate Procedure 8, Plaintiff-Appellant Apple Inc. (“Apple”) moves to stay the district court’s August 9, 2012 order unsealing certain trial and motion exhibits containing Apple’s trade secret financial data and market research reports, pending resolution of Apple’s appeal of that order.

I. BACKGROUND

A. Procedural History

Apple and Samsung are parties to a patent infringement jury trial in the Northern District of California (C.A. No. 11-1846-LHK), which began on July 30, 2012 and is expected to conclude in the near future.

Substantially prior to trial, Apple and Samsung moved to seal certain exhibits to pretrial motions (including non-dispositive motions). Although no party opposed Apple’s sealing request, non-party Reuters America LLC intervened and filed an opposition. On July 17, 2012, the district court denied the motions to seal without prejudice. Exhibit 1, Order Denying Sealing Motions, at 3. The court allowed the parties one week to file renewed motions narrowing the scope of the materials to be sealed to those containing “exceptionally sensitive information.” *Id.*

The following week, Apple and Samsung filed a joint motion that substantially narrowed the scope of exhibits that would need to be sealed at trial.

Exhibit 2, Joint Motion Regarding Sealing of Exhibits, at 10-11. At a pretrial conference on July 27, 2012, the district court heard argument on the motions to seal and directed the parties to file supplemental submissions in support of their requests for sealing by July 30, 2012. Exhibit 3, Excerpt of July 27, 2012 Hrg. Tr., at 4-39. On July 30, 2012, Apple moved to seal 46 specific trial exhibits (of the nearly 500 on the parties' individual and joint exhibit lists) and 31 exhibits to prior motions filed in the case—only a small fraction of the exhibits filed previously—as well as one brief and declaration. Exhibit 4, Apple's Motion to Seal Confidential Trial Exhibits, at 7-14; Exhibit 5, Apple's Motion to Seal Prior Motions and Exhibits Thereto, at 5-14.

The documents that Apple sought to seal fell within four narrow categories of trade secrets: (i) detailed financial information; (ii) non-public source code and schematics; (iii) proprietary market research reports; and (iv) confidential licensing information. In most instances, Apple did not ask to seal documents in their entirety, but merely to protect Apple's most sensitive information through targeted redactions. Moreover, many of the documents that Apple sought to seal are large compilation documents, in which the vast majority of the information bears no relation to the issues for trial (*e.g.*, financial and market research data for unrelated products or from outside the United States). Owing to the high risk of competitive

harm that would result from the disclosure of any of this information, Apple strictly limits access—even internally—to the documents it requested to seal.

On August 9, 2012, the district court granted-in-part and denied-in-part Apple's motions to seal. Exhibit 6, Order Granting-in-Part and Denying-in-Part Motions to Seal, at 3-16. The court allowed Apple to seal certain trial exhibits and exhibits to prior motions to the extent that they contain information concerning Apple's production and supply capacity, source code, full market research reports prepared by third parties, and pricing terms of licensing agreements. *Id.* However, the court ordered unsealed documents disclosing Apple's confidential product- and model-specific profits, profit margins, unit sales, revenues, and costs, as well as Apple's own proprietary market research reports and customer surveys and the non-price terms of Apple's confidential licensing agreements. *Id.*¹

On August 13, 2012, Apple filed a timely notice of appeal from the district court's order. Exhibit 7, Notice of Appeal, at 1. Apple also moved for a stay of the order pending appeal. Exhibit 8, Apple Inc.'s Motion to Stay Order Denying-in-Part Motions to Seal, at 1. Later that day, Samsung filed a separate notice of appeal and motion for stay of the district court's unsealing order as it pertains to Samsung's confidential documents.

¹ Apple is not appealing the district court's order unsealing the non-price terms of its licensing agreements.

On August 15, 2012, the district court granted-in-part and denied-in-part the parties' request for a stay pending appeal. Exhibit 9, Order Granting in Part and Denying in Part the Parties' Motion to Stay Pending Appeal, at 3. The district court recognized that the equities favored a stay because "the parties will be deprived of any remedy if this Court does not stay its order," "the parties may be irreparably injured absent a stay," and "the public interest ... is not unduly harmed by a short stay." *Id.* at 2. However, the district court did not stay its order until such time as this Court resolves the parties' appeals. Rather, its stay lasts only "pending a decision by the United States Court of Appeals for the Federal Circuit *on a motion for stay pending appeal.*" *Id.* at 3 (emphasis added). At a hearing that same day, the district court ordered that the parties seek a further stay from this Court no later than today, August 17, 2012. Exhibit 10, Excerpt of Aug. 15, 2012 Hrg. Tr., at 2655-2656.

To protect its confidential information during the pendency of this Court's review, and to ensure that the district court's stay does not expire before this Court has a chance to decide the appeal, Apple respectfully requests that this Court stay the district court's order pending resolution of Apple's appeal.

B. Factual Background

The trade secret information that is at issue in this appeal falls into two categories: financial data and market research reports.

1. Financial Data

Apple prepares detailed financial statements for each of its products that go well beyond the high-level data in the company's public filings. Exhibit 11, Decl. of Jim Bean in Support of Apple's Motion to Seal Previously Filed Motions and Exhibits Thereto, ¶ 3. For example, Apple maintains product- and model-specific data concerning costs, profit margins, and sales on a per unit basis. This detailed financial information is contained in fourteen exhibits to the parties' prior *Daubert* and summary judgment motions, which the district court ordered unsealed and are the subject of Apple's appeal.

Apple goes to great lengths to protect the confidentiality of this detailed financial information. Even within Apple, very few people have access to this information. Access is provided only to Apple employees on "a need to know basis" and must be approved in advance by one of Apple's Vice Presidents of Finance. *Id.* The list of those who have access to Apple's detailed financial documents is reviewed quarterly and is revised to ensure that Apple employees who no longer require access do not receive that information. *Id.* On the very rare occasions that Apple discloses its nonpublic financial information to those outside Apple, it does so only subject to highly restrictive nondisclosure agreements or protective orders. *Id.*

Apple maintains tight control over its detailed financial information because any disclosure of this information would place Apple at a severe competitive disadvantage. For example, detailed information concerning Apple's costs and profit margins would allow its competitors to identify the specific products where they could most successfully undercut Apple's pricing. *Id.* ¶ 8. Apple's suppliers, likewise, could use such detailed information to extract higher prices for those components that Apple needs most. *Id.*

2. Market Research Reports

Apple conducts regular surveys of its customers worldwide to determine what product features drive their purchasing decisions. Exhibit 12, Decl. of Gregory Joswiak in Support of Apple's Motion to Seal Trial Exhibits, ¶¶ 3-4. Apple compiles and analyzes the results of these surveys into monthly and quarterly market research reports, which report on a country-by-country basis what product features most influenced their purchasing decisions. *Id.* These market research reports comprise fifteen of the trial exhibits that the district court ordered unsealed. Exhibit 6, at 8-10.

Access to these market research reports is tightly controlled within Apple. Each document is stamped confidential and provided only on a "need to know" basis. Exhibit 12, ¶ 7. The results of Apple's customer surveys may not be circulated outside a small group of Apple executives without the permission of

Gregory Joswiak, Apple's Vice President of iPod, iPhone, and iOS product marketing. *Id.* And even then, it is almost always the *results* of individual survey questions—not *the entire reports*—to which Apple allows broader access. *Id.*

The close control that Apple exercises over these documents is necessary to prevent Apple's competitors—who do not have direct access to Apple's current customer base—from obtaining the valuable competitive information contained in these reports. Recent survey results that concern products Apple still markets would provide Apple's competitors with valuable insights into how to design their products to attract Apple's customers. *Id.* ¶¶ 9, 11, 13. And access to Apple's own analysis—especially when coupled with the trend data from several consecutive studies—would provide Apple's competitors an inside look into Apple's own future product development and marketing strategies.

II. ARGUMENT

A stay of the district court's order unsealing Apple's confidential financial data and market research reports—all highly-guarded trade secrets—is essential to Apple obtaining the relief it seeks through this appeal. Absent a stay, Apple's trade secret information would forever be made public, rendering the issues raised by Apple's appeal moot before this Court has an opportunity to consider them on the merits.

This Court balances four factors when determining whether to stay a district court's order pending appeal:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig., 449 F. App'x 35, 36 (Fed. Cir. 2011) (nonprecedential) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 512 (Fed. Cir. 1990) (reciting factors).

No single factor is dispositive, but the first two “are the most critical.” *Cyclobenzaprine*, 449 F. App'x at 36; *Standard Havens*, 897 F.2d at 513 (“When harm to applicant is great enough, a court will not require ‘a strong showing’ that applicant is ‘likely to succeed on the merits.’” (quoting *Hilton*, 481 U.S. at 776)). Each of those factors strongly favors granting a stay here.

A. Apple Is Likely To Succeed On The Merits

As is further explained in Apple's opening brief on appeal (also filed today), the district court's decision to unseal Apple's highly sensitive financial data and

market research reports was an abuse of discretion. The Ninth Circuit² has ruled that the need to protect trade secrets qualifies as a “compelling reason” that overcomes the presumption in favor of public access to court documents.

Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006) (“In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to ... **release trade secrets.**” (emphasis added) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978))); *see also Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) (“The publication of materials that could result in infringement upon trade secrets has long been considered a factor that would overcome this strong presumption [for public access].” (citing *EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th Cir. 1990))); *In re Electronic Arts, Inc.*, 298 F. App’x 568, 569-570 (9th Cir. 2008) (nonprecedential) (concluding that there were “compelling reasons” to seal documents containing trade secrets related to licensing terms); *McDonnell v. Southwest Airlines Co.*, 292 F. App’x 679, 680 (9th Cir. 2008) (nonprecedential) (affirming finding that “compelling reasons” supported denying public access to “documents contain[ing] trade secrets and confidential procedures and

² Because this appeal does not raise issues unique to patent law, the law of the regional circuit—in this case, the Ninth Circuit—applies. *See In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008).

communications”). The district court’s decision to unseal Apple’s trade secret financial data and market research reports was contrary to this established precedent.³

Moreover, much of the information that the district court ordered unsealed is only peripherally relevant to the issues for trial, such that unsealing it would do little to aid the public’s understanding of the judicial process. Because the compelling reasons for maintaining the confidentiality of this information substantially outweigh any interest the public may have in its disclosure, Apple is likely to succeed on the merits.

B. Apple Will Be Irreparably Harmed Absent A Stay

As Apple’s brief explains more fully, the disclosure of the materials that are the subject of Apple’s appeal—Apple’s most sensitive financial and market research reports—would irreparably harm Apple. But requiring disclosure of those documents *even before this Court is able to address the merits* would deprive Apple of any opportunity even to argue its appeal. Unless this Court grants a stay, the appeal will be moot, as even a reversal of the district court’s order could not

³ The Ninth Circuit requires a lesser showing of “good cause”—as opposed to “compelling reasons”—to seal documents filed in connection with non-dispositive motions. *Kamakana*, 447 F.3d at 1179. Although many of the documents Apple sought to seal were exhibits to non-dispositive evidentiary motions, the district court nonetheless required Apple to demonstrate “compelling reasons” for their sealing. Exhibit 6, at 11-16. The district court’s legal error in applying the higher “compelling reasons” standard to motion exhibits is a further reason Apple is likely to succeed on the merits.

undo a mandated disclosure of Apple's trade secrets. As the Ninth Circuit has stated, "[s]ecrecy is a one-way street: Once information is published, it cannot be made secret again." *In re Copley Press*, 518 F.3d 1022, 1025 (9th Cir. 2008); *see also N. Atl. Instruments, Inc. v. Haber*, 188 F.3d 38, 49 (2d Cir. 1999) ("A trade secret once lost is, of course, lost forever." (quoting *FMC Corp. v. Taiwan Tainan Giant Indus. Co.*, 730 F.2d 61, 63 (2d Cir. 1984))). The district court echoed those concerns in granting Apple's stay motion, stating that "the parties may be irreparably injured absent a stay" because "what once may have been trade secret no longer will be" if disclosed. Exhibit 9, at 2. Unfortunately, the court did not see fit to extend the stay throughout the pendency of the appeal. This Court should take that step in order to avoid mooting the appeal and irreparably harming Apple.

The documents at issue, if publicly disclosed, would provide Apple's competitors an unprecedented business advantage, allowing them access to product- and model-specific cost, profit, margin, and market research data that are not widely available even within Apple. *See Am. Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 741 (Fed. Cir. 1987) (recognizing harms of disclosure of confidential business information to competitors and collecting cases).

The district court indirectly acknowledged this risk, although it drew exactly the wrong conclusion from it. As the district court explained, "it stands to reason that [Apple's] competitors may infer the most significant results [of its market

research] by simply observing Apple’s product releases and marketing campaigns.” Exhibit 6, at 9. The court failed to recognize that the converse is also true: equipped with Apple’s market research, Apple’s competitors could predict Apple’s product releases and marketing campaigns—putting Apple at an irreparable competitive disadvantage.

Unless the district court’s order is stayed pending appeal, no corrective measures can restore the confidentiality of these materials—even if this Court ultimately determines that the district court wrongly ordered them unsealed. Given the speed at which information propagates and duplicates in the digital age, even momentary public access to this information will allow it to reside in perpetuity within the public domain. Those concerns are particularly acute given the close media attention to this case. *See* Exhibit 6, at 6 (“this trial is especially unusual in the extraordinary public interest it has generated”). To avoid these immediate and irreparable harms, a stay of the district court’s order is necessary to permit this Court to consider the merits of Apple’s appeal.

C. A Stay Will Not Injure Any Entity Interested In These Proceedings

As the district court recognized, a stay of its order unsealing Apple’s confidential documents will not injure anyone interested in these proceedings, including the public. Exhibit 9, at 2 (“[T]he public interest, which favors disclosure of relevant information in order to understand the proceedings, is not

unduly harmed by a short stay.”). A stay would merely maintain the status quo for the brief period necessary to permit full consideration of Apple’s appeal. *Nken v. Holder*, 556 U.S. 418, 429 (2009) (“A stay ‘simply suspend[s] judicial alteration of the status quo[.]’” (first alteration in original) (quoting *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers))). In fact, the desire to maintain the status quo motivated the district court to stay its order to permit Apple to seek further relief from this Court. Exhibit 9, at 2 (“[A] short stay would merely maintain the status quo until the parties can seek stay relief from the Federal Circuit.”). If this Court ultimately rejects Apple’s appeal, the public will be in the same position as it would have been absent a stay.

Moreover, this is not a situation in which this Court’s resolution of Apple’s appeal will be extended by a protracted briefing schedule. Apple is filing its opening brief on appeal today—one week after the order appealed from, and the day after the appeal was docketed in this Court. Accordingly, there is no reason to believe that resolution of Apple’s appeal will take unduly long.

D. A Stay Serves The Public Interest

The public has a strong interest in ensuring that litigants like Apple have a full and fair opportunity to obtain judicial relief. *Prometheus Radio Project v. FCC*, No. 03-3388, 2003 WL 22052896, at *1 (3d Cir. Sept. 3, 2003)

(nonprecedential) (citing “the public’s interest in reaching the proper resolution” as reason to stay “pending thorough and efficient judicial review”). Absent a stay, this Court could not reach the merits of Apple’s appeal before those issues are rendered moot through the public disclosure of Apple’s confidential information—as the district court itself recognized. Exhibit 9, at 2 (“[T]he parties will be deprived of any remedy if this Court does not stay its order.”). Thus, a stay pending a final resolution of Apple’s appeal is necessary to promote the public’s interest in providing a forum that can provide effective relief.

A stay would also promote the public’s interest in protecting patentees’ legitimate confidentiality interests. To avoid a chilling effect on the enforcement of patent rights, patentees need confidence that the enforcement of their patents will not sacrifice the confidentiality of their most sensitive business information. *Cf. In re Sarkar*, 575 F.2d 870, 872 (C.C.P.A. 1978) (“[W]herever possible, trade secret law and patent law should be administered in such manner that the former will not deter an inventor from seeking the benefit of the latter[.]” (citing *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974))). And if a district court incorrectly orders disclosure, patentees need the assurance that meaningful appellate review by this Court is available to correct those errors. A stay is essential to protecting those appellate rights.

III. CONCLUSION

For the foregoing reasons, Apple respectfully requests that the Court stay the district court's August 9, 2012 order unsealing certain trial and motion exhibits containing Apple's confidential financial data and market research reports pending resolution of Apple's appeal.

Respectfully submitted,

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STATEMENT OF CONSENT OR OPPOSITION

Pursuant to Federal Circuit Rule 27(a), I hereby certify that counsel for Apple conferred with counsel for Samsung concerning the relief requested in this motion. Samsung consents to the relief requested in this motion. Counsel for Apple also conferred with counsel for non-party Reuters America LLC, who intervened in the district court and opposed Apple's motions to seal. Reuters opposes the relief requested in this motion.

Dated: August 17, 2012

/s/ William F. Lee _____

William F. Lee

Attorney for Plaintiff-Appellant Apple Inc.

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Plaintiff-Appellant Apple Inc.'s Emergency Motion to Stay Pending Resolution of Appeal with the Clerk of the United States Court of Appeals for the Federal Circuit via the CM/ECF system and served a copy on counsel of record, this 17th day of August, 2012, by the CM/ECF system and by electronic mail to the parties on service list below who have consented to service under Fed. R. App. P. 27(c)(1)(D).

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Dated: August 17, 2012

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Attorney for Plaintiff-Appellant Apple Inc.

EXHIBIT 1

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE, INC., a California corporation,	)	Case No.: 11-CV-01846-LHK
)	
Plaintiff,	)	ORDER DENYING SEALING
	)	MOTIONS
v.)	
)	
SAMSUNG ELECTRONICS CO., LTD., a)	
Korean corporation; SAMSUNG)	
ELECTRONICS AMERICA, INC., a New York)	
corporation; SAMSUNG)	
TELECOMMUNICATIONS AMERICA, LLC,)	
a Delaware limited liability company,)	
)	
Defendants.)	

Before the Court are administrative motions to seal related to the motions for summary judgment that were resolved by Court Orders at ECF Nos. 1156 & 1158, as well as administrative motions to seal various documents that have been filed in anticipation of the trial currently set for July 30, 2012. Specifically, the parties seek to seal documents and portions of documents related to the motions for summary judgment, Daubert motions, pending claim construction statements, motions in limine, and other documents that pertain to and presumably will be used in the upcoming trial. See, e.g. ECF Nos. 1236, 1233, 1208, 1206, 1201, 1186, 1185, 1184, 1183, 1179, 1140, 1139, 1125, 1122, 1090, 1089, 1069, 1063, 1061, 1060, 1059, 1052, 1023, 1024, 1022, 1020, 1013, 1007, 1004, 997, 991, 930, 927, 925, and 847 (hereafter “Sealing Motions”).

1 Historically, courts have recognized a “general right to inspect and copy public records and
2 documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S.
3 589, 597 & n. 7 (1978). Unless a particular court record is one “traditionally kept secret,” a “strong
4 presumption in favor of access” is the starting point. *Foltz v. State Farm Mutual Auto. Insurance*
5 *Company*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to seal a judicial record then bears
6 the burden of overcoming this strong presumption by meeting the “compelling reasons” standard.
7 *Id.* at 1135. That is, the party must “articulate[] compelling reasons supported by specific factual
8 findings,” *id.* (citing *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1102-03 (9th
9 Cir.1999)), that outweigh the general history of access and the public policies favoring disclosure,
10 such as the “ ‘public interest in understanding the judicial process.’ ” *Hagestad*, 49 F.3d at 1434
11 (quoting *EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th Cir. 1990)).

12 The Ninth Circuit has explained that the “strong presumption of access to judicial records
13 applies fully to dispositive pleadings, including motions for summary judgment and related
14 attachments” because “the resolution of a dispute on the merits, whether by trial or summary
15 judgment, is at the heart of the interest in ensuring the “public’s understanding of the judicial
16 process and of significant public events.” *Kamakana v. City and County of Honolulu*, 447 F.3d
17 1172, 1177 (9th Cir. 2006). The Ninth Circuit has also carved out an exception to the strong
18 presumption of openness for pre-trial, non-dispositive motions. The Ninth Circuit applies a “good
19 cause” showing to keep sealed records attached to non-dispositive motions. *Id.* at 1180. Thus the
20 Court applies a two tiered approach: “judicial records attached to dispositive motions [are treated]
21 differently from records attached to non-dispositive motions. Those who seek to maintain the
22 secrecy of documents attached to dispositive motions must meet the high threshold of showing that
23 ‘compelling reasons’ support secrecy” while a showing of good cause will suffice at earlier stages
24 of litigation. *Id.*

25 As Judge Alsup explained in *Oracle America v. Google, Inc.*, 10-CV-03561-WHA, at ECF
26 No. 540, “The United States district court is a public institution, and the workings of litigation must
27 be open to public view. Pretrial submissions are a part of trial.” Accordingly, Judge Alsup advised
28

1 counsel that “unless they identify a limited amount of exceptionally sensitive information that truly
2 deserves protection, the motions will be denied outright.” *Id.*

3 Similarly, this Court explained at the June 29, 2012 case management conference that “the
4 whole trial is going to be open.” Hr’g Tr. at 78. In light of the Ninth Circuit’s admonition in
5 *Kamakana* regarding the presumption of openness and the high burden placed on sealing
6 documents at this late, merits stage of the litigation, it appears that the parties have overdesignated
7 confidential documents and are seeking to seal information that is not truly sealable under the
8 “compelling reasons” standard. As one example, the parties have sought to redact descriptions of
9 trial exhibits that will presumably be used in open court. *See, e.g.* Exhibit A to Samsung’s
10 Objections to Apple’s Exhibit List. Accordingly, the Sealing Motions are DENIED without
11 prejudice.

12 The parties may file renewed motions to seal within one week of the date of this Order.
13 However, the parties are ORDERED to carefully scrutinize the documents it seeks to seal. At this
14 stage of the proceedings, the presumption of openness will apply to all documents and only
15 documents of exceptionally sensitive information that truly deserve protection will be allowed to
16 be redacted or kept from the public. Nearly all of the documents which met the lower, “good
17 cause” standard do not meet the higher, “compelling reasons” standard for trial.

18 **IT IS SO ORDERED.**

19 Dated: July 17, 2012

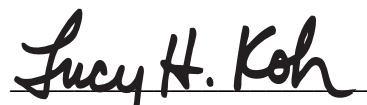
20 
21 _____
22 LUCY H. KOH
23 United States District Judge
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EXHIBIT 2

1 [COUNSEL LISTED ON SIGNATURE PAGES]

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

10

SAN JOSE DIVISION

11

APPLE INC., a California corporation,

Case No. 11-cv-01846-LHK

12

Plaintiff,

**JOINT MOTION REGARDING
SEALING OF TRIAL EXHIBITS**

13

v.

Date: July 27, 2012

14

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

Time: 3:00 pm

15

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

Place: Courtroom 1, 5th Floor

16

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

Judge: Hon. Lucy H. Koh

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Defendants.

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1 Pursuant to the Minute Order and Case Management Order of July 24, 2012 (Dkt. No.
2 1329), Apple Inc. and Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and
3 Samsung Telecommunications America, LLC (collectively, "Samsung") have met and conferred
4 regarding the treatment of confidential information at trial.

5 Pursuant to Civil L.R. 7-11, the Parties jointly move for an order allowing the parties to
6 request that certain types of highly sensitive information be sealed and establishing a protocol
7 during trial for *in camera* review of proposed redacted versions of trial exhibits.

8 **Relief Sought**

9 Although the Parties' negotiations continue, they have agreed to propose for the Court's
10 consideration the following protocol:

11 1. As previously ordered, the Parties will disclose direct examination exhibits to be
12 used in witness examinations at 7 pm two days before the witness is scheduled to testify.
13 Before the next day's trial session, the parties will jointly lodge copies of such exhibits
14 highlighted to show the redactions requested, enabling the Court to review and reject any
15 overbroad sealing requests.

16 2. As previously ordered, the Parties will disclose cross examination exhibits to be
17 used in witness examinations at 2 pm the day before the witness is scheduled to testify.
18 By 5 pm the day before the witness is scheduled to testify, the parties will jointly lodge
19 copies of such exhibits highlighted to show the redactions requested, enabling the Court to
20 review and reject any overbroad sealing requests.

21 3. The Parties would limit their sealing requests to the categories of highly
22 confidential, sensitive information enumerated below, except to the extent good cause
23 exists to expand the categories.

24 4. To the extent that the Court approves any such sealing requests, only the approved
25 redacted versions of the trial exhibits shall be displayed to the public. The Court, the
26 witness and the jury may review the unredacted versions and the unredacted versions shall
27 be received in evidence and maintained under seal.
28

1 5. For certain categories of confidential information enumerated below, only those
2 portions of documents, if any, that are actually published to the jury would be received in
3 evidence and made public. The parties would meet and confer promptly after the end of
4 each day’s court session to prepare exhibits comprising the published exhibit portions.
5 The Parties submit the accompanying proposed order implementing the protocol outlined above.
6 They respectfully request that the Court adopt this protocol because it minimizes the amount of
7 Court time required to adjudicate sealing issues in advance of trial, preserves the Parties’ ability
8 to seek sealing of confidential information to the extent compelling reasons exist to justify such
9 sealing, and ensures that the public receives timely access to the evidence actually presented to
10 the jury during the course of trial. The Parties do not intend to restrict each other’s ability to
11 present materials contained in the trial exhibits to the jury; instead the Parties seek an order
12 establishing a protocol for dealing with highly sensitive information on a case-by-case basis.

Argument

14 **1. The Parties have conferred extensively, and continue to confer, in an attempt**
15 **to reduce the amount of sensitive information required to be received in**
16 **evidence.**

17 On the same day that the parties exchanged revised trial exhibits, counsel for Samsung
18 and Apple participated in a telephonic conference and attempted to reach an agreement that
19 would reduce the need to introduce exhibits that contain highly sensitive information.
20 (Declaration of Prashanth Chennakesavan in Support of the Parties’ Joint Motion Regarding the
21 Sealing of Trial Exhibits (“Chennakesavan Decl.”) ¶ 3.) The parties re-convened the following
22 morning for an in-person meet-and-confer session and exchanged various specific proposals that
23 would help ensure that few exhibits would be introduced at trial that would require sealing. (*Id.*
24 ¶¶ 4-5) While the parties have yet to reach a final agreement that would eliminate the need to
25 introduce exhibits that contain highly sensitive information, both Samsung and Apple are
26 committed to negotiating in good faith to minimize the need for maintaining the confidentiality of
27 trial exhibits and ensuring that the trial remains an open forum. (*Id.* ¶ 6.)
28

1 **2. The Parties request an order allowing sealing of discrete categories of**
2 **evidence.**

3 The parties acknowledge the presumption of access to judicial records arising from the
4 public’s interest in understanding of the judicial process and of significant public events. The
5 parties also recognize that the presumption of openness will apply to all documents introduced at
6 trial. (Dkt. No. 1256 at 3.) Nonetheless, “‘compelling reasons’ sufficient to outweigh the
7 public’s interest in disclosure and justify sealing court records exist when such “‘court files might
8 have become a vehicle for improper purposes,” or for release of trade secrets. *Kamakana v. City*
9 *and County of Honolulu*, 447 F.3d 1172, 1177 (9th Cir. 2006) (quoting *Nixon v. Warner*
10 *Comm’ns, Inc.*, 435 U.S. 589, 598 (1978)). Indeed, in a complex trial such as this one involving
11 multinational corporations with legitimate business interests in the secrecy of certain types of
12 information, “documents of exceptionally sensitive information” exist “that truly deserve
13 protection.” Dkt. No. 1256 at 3. The Court should allow this information “to be redacted or kept
14 from the public.” *Id.*

15 **a. Highly Sensitive Financial Information**

16 The parties request to seal their most highly sensitive and non-public financial and
17 manufacturing information comprising cost data, profit margins, and revenue and unit sales
18 information by product.

19 There are multiple “compelling reasons” to seal this type of information. *Bauer Bros.*
20 *LLC v. Nike, Inc.*, No. 09cv500–WQH–BGS, 2012 WL 1899838, at *3-4 (S.D. Cal. May 24,
21 2012) (sealing deposition testimony and documents containing financial data relating to sales and
22 marketing information, product development, profits, advertising and marketing, “the financial
23 data sought to be sealed by Nike could be used for improper purposes for Nike’s business
24 competitors, as it includes . . . business sales and accounting data . . . and costs analysis”); *TriQuint*
25 *Semiconductor v. Avago Techs., Ltd.*, No. CV 09-1531-PHX-JAT, 2011 U.S. Dist. LEXIS 143942,
26 at *10-12 (D. Ariz. Dec. 13, 2011) (finding compelling reasons to seal information regarding
27 sales, market analysis, capital expenditures, cost, and manufacturing capacity.) This Court has
28 found that “long-term financial projections, discussions of business strategy, and competitive

1 analyses” provide compelling reasons for sealing. *Kreiger v. Atheros Commc’ns, Inc.*, No. 11–
2 CV–00640–LHK, 2011 WL 2550831, at *1 (N.D. Cal. Jun. 25, 2011) (sealing presentation
3 containing highly sensitive and confidential financial information). Production information and
4 “precise revenue information results” and “exact sales and production numbers,” which could be
5 used by competitors to calibrate their pricing and distribution methods to undercut defendant, also
6 provide compelling reasons for sealing. *Bean v. John Wiley & Sons, Inc.*, No. CV 11–08028–
7 PCT–FJM, 2012 WL 1078662, at *6-7 (D. Ariz. Mar. 30, 2012) (sealing charts summarizing
8 defendant’s sales and revenue figures broken out by product).

9 Disclosure of the Parties’ specific cost information, profit margins, and product line-
10 specific information would give competitors a substantial and unfair advantage. (Declaration of
11 Mark Buckley in Support of Apple Motions to Seal (“Buckley Decl.”) ¶ 4-6; Declaration of
12 Gregory Joswiak in Support of Apple Motions to Seal (“Joswiak Decl.”) ¶ 7-8. Knowledge of
13 this kind of information would allow competitors to tailor their product offerings and pricing to
14 undercut the Parties’ product offerings. Competitors would learn what price points to target in
15 which specific markets, and understand the Parties’ weaknesses in connection with products that
16 have weak profit margins or costly components. (Buckley Decl. ¶ 6; Joswiak Decl. ¶ 7;
17 Declaration of GiHo Ro in Support of the Parties’ Joint Motion Regarding the Sealing of Trial
18 Exhibits (“Ro Decl.”) ¶¶ 8-9.). Allowing public access to the parties’ cost, profit, and product-
19 line specific information would also harm their competitive position with component suppliers.
20 Buckley Decl. ¶ 6; Ro Decl. ¶¶ 8-10. Suppliers could use cost information to alter their pricing
21 on components the parties use in their products. *Id.*

22 Exhibits PX29 and DX777 are exemplary of the kinds of documents at issue. The Parties
23 will highlight these exhibits to show the highly confidential portions and present them to the
24 Court for inspection during the hearing this afternoon. Trial exhibit PX29 includes the specific
25 categories of operating expenses and the amounts various Samsung entities spend on each
26 category, specific costs incurred in manufacturing the products at issue, material costs for accused
27 products, and Samsung’s profits and profit margins for each accused product. DX777 contains
28 similarly detailed cost-related information for Apple. DX777 contains unit and revenue data

1 broken down by market, product model, and product sub-model. Such information is extremely
2 sensitive. For example, only Apple knows how many 16 GB iPhone 4S Apple sold last quarter in
3 the United States as compared to 64 GB iPhone 4S or 8 GB iPhone 3GS, and what Apple's profit
4 margins on each of those products was. (Joswiak Decl. ¶ 8.) If this sort of treasure trove of
5 competitive intelligence were made public, competitors would be able to target their product
6 offerings at the parties' most successful and profitable products. (Joswiak Decl. ¶ 8; Ro Decl. at ¶
7 10.)

8 Also highly sensitive is production capacity information such as that shown in PX25.35.
9 If competitors gained access to capacity data, they would learn when the parties' production
10 capacity is typically stretched thinly and when they have excess capacity, and could alter their
11 production timing accordingly. (Buckley Decl. ¶ 4.) PX25.35 also contains product-line specific
12 capacity data, which is even more critically sensitive. *Id.* Disclosure would allow competitors to
13 see what specific lines of products are increasing its supply and which are decreasing, giving a
14 significant insight into the parties' future business plans. Such information would similarly
15 reveal to competitors what precise products they need to counter, and how much they should
16 invest in that specific area. (*Id.*)

17 Also of great concern to the Parties is the potential disclosure of capacity data to contract
18 manufacturers. It is critical that the Parties maintain negotiation position in relationship to their
19 suppliers and manufacturing services providers. (*Id.* ¶ 5.) If such entities learn the Parties'
20 capacity patterns or similar supply chain information, they could predict when the Parties would
21 be most motivated to increase supply and could use that leverage in negotiations relating to
22 manufacturing and component supply services.

23 Because such financial information is so sensitive, both parties guard it carefully. Apple's
24 highly sensitive financial data is among the most painstakingly protected information at the
25 company. (Buckley Decl. ¶ 3.) Even within Apple, only a limited number of individuals are
26 authorized to receive the information. *Id.* Apple does not share its nonpublic financial data—
27 including cost data, product line details, profit margins, and capacity data—with third parties or
28

1 vendors. *Id.* In the rare instance it is required to share any nonpublic financial data with third
2 parties, Apple insists on very restrictive nondisclosure agreements or protective orders. *Id.*

3 Similarly, information of the kind described above has never been disclosed to the public
4 and is kept in the strictest confidence within Samsung. (Ro Decl. ¶ 6.); *see Bean*, 2012 WL
5 1078662, at *6-7 (finding additional justification to seal “information . . . kept confidential not
6 only from the public, but also from [defendant’s] own employees”). The financial data at issue
7 here is only made available to a limited number of employees on a need-to-know basis. Samsung
8 instructs its employees to keep hard copies of business documents in secure locations, hires
9 private security forces to monitor its facilities, asks each employee to walk through a metal
10 detector when exiting its offices, and uses special paper that triggers metal detectors if carried
11 outside Samsung offices. (Dkt. 987-47; Decl. of Han-Yeol Ryu at ¶¶ 12-14.) Samsung produced
12 documents containing highly sensitive financial data in this litigation only to Apple’s outside
13 counsel and experts who had signed the Protective Order. Samsung went to great lengths to
14 protect the confidentiality of disclosed data; Samsung distributed a limited number of numbered
15 compact discs that contained soft copies of the data, retrieved the discs after a certain amount of
16 time, and only permitted the inspection of the most confidential data in a secure location to
17 prevent the copying or dissemination of Samsung’s data. (Ro Decl. ¶ 6.)

18 The extensive financial data that the Parties seek to seal would “do little to aid the public’s
19 understanding of the judicial process, but have the potential to cause significant harm to [Apple’s]
20 competitive and financial position within its industry.” *Network Appliance, Inc. v. Sun*
21 *Microsystems Inc.*, No. C-07-06053 EDL, 2010 U.S. Dist. LEXIS 21721, at *13-14 (N.D. Cal.
22 Mar. 10, 2010). *Network Appliance*, 2010 U.S. Dist. LEXIS 21721, at *13-14 While the
23 disclosure of some information during trial may be necessary to challenge the experts’
24 calculations, the exhibits themselves include detailed cost, product line information, and profit
25 margins provide a level of detail far beyond what is necessary to understand the parties’ positions
26 and the damages and other remedies the parties seek. Accordingly, the parties’ need to seal this
27 information outweighs any public interest in full disclosure.

1 **b. Specific Terms of Licenses, Settlements, Acquisitions, and Source Code**

2 The Parties are continuing to discuss potential stipulations or summary exhibits that would
3 obviate the need to submit confidential license, settlement and acquisition agreements as exhibits.
4 If this is not practicable, however, the Parties may seek to seal specific license agreements and
5 information derived from license agreements involving third parties, or to at least redact the
6 counterparty names. Such material is consistently held by courts to meet the “compelling
7 reasons” standard of the Ninth Circuit. *See, e.g., Electronic Arts, Inc. v. United States District*
8 *Court for the Northern District of California*, 298 F. App’x 568, 569 (9th Cir. 2008) (finding
9 pricing terms, royalty rates, guaranteed minimum payment terms of licensing agreement
10 constituted trade secret and ordering sealing of license agreement filed as trial exhibit);
11 *Powertech Tec., Inc., v. Tessera, Inc.*, No. C 11-6121 CW, 2012 U.S. Dist. LEXIS 75831, at *5
12 (N.D. Cal. May 31, 2012) (compelling reasons to seal license agreement).

13 There are compelling reasons to seal court records containing “pricing terms, royalty
14 rates and guaranteed minimum payment terms” found in licensing agreements which “plainly
15 fall[] within the definition of ‘trade secrets.’” *Id. Electronic Arts, Inc.*, 298 F. App’x at 569
16 (quoting *Kamakana*, 447 F.3d at 1179) Further, license agreements are the subject of
17 nondisclosure agreements and are generally highly confidential to Apple and the third parties that
18 signed those agreements. (Tierney Decl. ISO Apple's Renewed Motion to Seal ¶ 5; Buckley
19 Declaration ¶ 9; *see also* previously submitted motions to seal, Dkt. Nos. 1328, 1340, 1376, 1378,
20 1390, 1394, and 1396). Those third parties also likely consider the content of these license
21 agreements to be highly confidential “trade secrets” and public disclosure of the information in
22 those agreements to be extremely harmful to them. (Tierney Decl. ¶ 5.) Apple carefully
23 maintains strict confidentiality of these license provisions. Even within Apple, very few
24 employees have access to these agreements, and they are maintained in a highly secure manner to
25 prevent inadvertent disclosure. (Buckley Declaration ¶ 8.)

26 There is very little public interest in knowing the specific licenses and agreements that
27 Apple or Samsung have entered into, the existence of which is a proprietary trade secret not only
28 to the parties to this action but to the counterparties in these agreements as well. There is even

1 less public interest in the names of the counterparties to Apple's and Samsung's license
2 agreements and disclosing those names would subject those third parties to competitive harm.
3 *Network Appliance*, 2010 U.S. Dist. LEXIS 21721, at *7 (material that would subject third parties
4 to competitive harm sealable).

5 Finally, the Parties' intend to introduce source code contained in their respective trial
6 exhibits into evidence during the trial. The parties will not oppose each other's efforts to seal the
7 record with respect to this source code as well as with respect to source code of third parties, and
8 will cooperate to preserve the confidentiality of the source code.¹

9 **c. Other Sensitive Material – Only to the Extent *Not* Published to the**
10 **Jury**

11 Following the Court's suggestion at the July 23 Final Pretrial Conference, the parties have
12 evaluated whether certain foundational confidential information could be eliminated from the
13 record.

14 Apple requests that certain consumer research reports be received in evidence only to the
15 extent shown to the jury. Among the documents Samsung has selected as potential exhibits in
16 this action are the quarterly iPhone buyers surveys that Apple conducts. Joswiak Decl. ¶ 3;
17 DX767. The surveys reveal, country-by-country, the factors driving customers to buy Apple
18 products versus competitive products such as Android. *Id.* No competitor has access to Apple's
19 customer base to conduct such in-depth analysis. *Id.* Currently, Apple competitors can only
20 speculate how Apple's customers weigh the relative value of, for instance, FaceTime video
21 calling functionality, battery life, or an LED flash, and they have to guess as to what

22 ¹ District courts in the Ninth Circuit have held that nonpublic, proprietary source code is
23 properly sealed under the "compelling reasons" standard because such "information represents
24 trade secrets sufficiently sensitive to outweigh the public's interest in accessibility of the
25 evidence." *Network Appliance v. Sun Microsystems Inc.*, No. C-07-06053 EDL, 2010 WL 841274,
26 *1, *4 (N.D.Cal. March 10, 2010); *see also Wacom Co., Ltd. v. Hanvon Corp.*, No. C06-5701RJB,
27 2007 WL 3026889, *3 (W.D.Wash. Oct. 16, 2007) (sealing confidential, nonpublic, proprietary
28 source code under the compelling reasons standard); *Omax Corp. v. Flow Intern. Corp.*, No. C04-
2334RSL, 2007 WL 4108604, *1-2 (W.D.Wash. Nov. 13, 2007) (sealing or redacting various
instances of source code upon a "compelling showing that that the public's right of access is
outweighed by the interests of the public and the parties in protecting files, records, or documents
from public view.").

1 demographics – age, gender, occupation – are most satisfied with Apple’s products. *Id.*
2 Moreover they do not know how the preferences of individuals in, for instance, Japan differ from
3 those in Australia, Korea, France and the United States. *Id.* All of that information is set out in
4 exacting detail in the proposed exhibits. No other entity could replicate this research because no
5 other entity has access to the customer base that Apple has.

6 Just as important as the survey data itself are the *conclusions* Apple has drawn from the
7 data. *Id.* ¶ 4. Knowing what Apple *thinks* about its customer base preferences is extremely
8 valuable to Apple competitors because it would allow them to infer what product features Apple
9 is likely to offer next, when, and in what markets. *Id.* Having an advance look into Apple’s next
10 moves would allow competitors to prepare products and marketing strategy to counter Apple’s
11 future products and target their product development plans accordingly. *Id.*

12 The Parties’ exhibit lists also contain research reports prepared by third parties and
13 purchased by the Parties under subscription. Third-party research reports are assembled by
14 providers at great expense and sold for many thousands of dollars. (Dkt. No. 1317-3, Sabri Decl.
15 ¶ 3.) As a result, the parties are contractually obligated to keep the reports confidential.
16 Disclosure of recent market research reports in their entirety on a publicly accessible website
17 could supplant entirely the market for such reports. If Apple were required to publicly disclose
18 this information, which Apple acquired under an agreement to keep the information private and
19 confidential, the affected third party companies could be reluctant to do business with Apple
20 again in the future, potentially permanently harming Apple’s relationships and preventing Apple
21 from obtaining this critical market research data. (*Id.* ¶ 4.)

22 Apple does not request sealing of such documents in their entirety, nor does Apple request
23 that either party be restricted from displaying to the jury portions of reports as they deem
24 necessary. Apple requests merely that *only* those portions of sensitive market research documents
25 that are *actually* displayed to the jury during the course of trial be received in evidence and made
26 public. Such a process balances the public’s interest in understanding the evidence that is
27 germane to the issues at trial while protecting Apple’s compelling interest to protect its
28

1 competitive advantage and third party market research providers' compelling interest in
2 protecting their subscription business models.

3 **3. The Parties' sealing requests are substantially narrower than those requested**
4 **pre-trial.**

5 By limiting their sealing requests to the above categories, the parties will allow to be made
6 public large amounts of confidential information that was previously subject to pre-trial sealing
7 motions. Among the previously undisclosed information that will become available in
8 accordance with this joint motion are:

- 9 • **High-level financial information:** Revenue, number of units sold by product line,
10 price (wholesale and final consumer) data, sources of revenue (search engines,
11 accessories, specific products), and information regarding revenue deferred over
12 lifespan of product to cover product updates;
- 13 • **Advertising expenditures:** Both total expenditures and expenditures by medium;
- 14 • **Discussions relating to licenses:** The fact that licenses exist, the fact that they
15 relate to the products at issue, the number of license agreements, and identities of
16 entities with whom the parties have has discussed, licenses even if no actual
17 agreement was entered into;
- 18 • **Information relating to general consumer behavior:** Excerpts of market
19 research studies, information relating to loyalty to product platforms, consumer
20 demand for design and particular features at issue in the case;
- 21 • **Expert Surveys:** conducted in connection with this case;
- 22 • **Information relating to product design:** confidential communications relating to
23 manufacturing challenges, relevant component options, teardowns of competitive
24 devices, reliability testing, and cost analysis relating to specific features or
25 components at issue;
- 26 • **Industrial Design information:** previously top-secret computer aided design and
27 model and prototype information and designer sketches;
- 28 • **Confidential product code names;**

- 1 • **General advertising strategy information:** to the extent relevant; and
- 2 • **Pre-suit Settlement and licensing negotiations between the Parties.**

3 From these and other disclosures during the course of trial, the public will learn a great deal about
4 the Parties' businesses and obtain a comprehensive understanding of the judicial process and the
5 issues and facts in dispute.

6 Conclusion

7 Because compelling reasons in favor of secrecy exist, the parties respectfully request that
8 the Court issue an order stating that the parties may request sealing of portions of trial exhibits
9 that include: (1) highly sensitive financial information; (2) confidential licensing information;
10 and/or (3) sensitive technical and business-related. The Parties further respectfully that the Court
11 adopt the protocol described above for confirming the extent to which exhibits may be sealed, as
12 set forth in the proposed order submitted herewith.
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Dated: July 27, 2012

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Dated: July 27, 2012

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TELECOMMUNICATIONS
AMERICA, LLC

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ATTESTATION OF E-FILED SIGNATURE

I, Michael A. Jacobs , am the ECF User whose ID and password are being used to file this Declaration. In compliance with General Order 45, X.B., I hereby attest that Victoria Maroulis has concurred in this filing.

Dated: July 27, 2012

/s/ Michael A. Jacobs
Michael A. Jacobs

EXHIBIT 3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,	)	C-11-01846 LHK
)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
	)	JULY 27, 2012
VS.)	
	)	PAGES 1-85
SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,)	
)	
)	
)	
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)	
DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

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1 SAN JOSE, CALIFORNIA JULY 27, 2012

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE CLERK: CALLING CASE NUMBER
6 C-11-01846 LHK, APPLE, INCORPORATED VERSUS SAMSUNG
7 ELECTRONICS COMPANY LIMITED, ET AL.

8 MR. MCELHINNY: GOOD AFTERNOON, YOUR
9 HONOR. HAROLD MCELHINNY, MICHAEL JACOBS, RACHEL
10 KREVANS AND BILL LEE FOR APPLE.

11 THE COURT: OKAY.

12 MR. JOHNSON: GOOD AFTERNOON, YOUR HONOR.
13 KEVIN JOHNSON, BILL PRICE, MIKE ZELLER, AND
14 VICTORIA MAROULIS ON BEHALF OF SAMSUNG.

15 THE COURT: GOOD AFTERNOON.

16 MR. OLSON: GOOD AFTERNOON, YOUR HONOR.
17 KARL OLSON AND XINYING VALERIAN FOR REUTERS.

18 THE COURT: OKAY. GOOD AFTERNOON.

19 OKAY. WITH REGARD TO APPLE'S RENEWED
20 OBJECTION TO PRELIMINARY INSTRUCTION NUMBER 21,
21 THAT'S DENIED. IT DOES NOT MEET THE CIVIL LOCAL
22 RULES STANDARD FOR MOTION FOR -- TO FILE A MOTION
23 FOR RECONSIDERATION.

24 WITH REGARD TO OBJECTIONS TO EVIDENCE,
25 EXHIBITS, WITNESSES, AND DEPOSITIONS, I KNOW WE HAD

1 PREVIOUSLY SET 9:00 O'CLOCK, BUT I'D LIKE TO HAVE
2 THE PARTIES FILE THAT AT 8:00. IS THAT DOABLE?

3 MR. MCELHINNY: YES, YOUR HONOR.

4 MR. JOHNSON: YES, YOUR HONOR.

5 THE COURT: OKAY. THANK YOU.

6 AND REGARDING -- LET ME ASK, WITH --
7 REGARDING YOUR MEET AND CONFER REGARDING
8 TRANSLATION DISPUTES, WHAT'S YOUR PROPOSAL ON HOW
9 THAT'S GOING TO BE RESOLVED? ARE YOU JUST GOING TO
10 HAVE COMPETING TRANSLATIONS IF YOU CAN'T COME TO AN
11 AGREEMENT?

12 MR. JACOBS: I UNDERSTAND WE'RE VERY
13 CLOSE, YOUR HONOR.

14 THE COURT: OKAY.

15 MR. JACOBS: I THINK -- I THINK THE
16 TRANSLATIONS ARE -- WE'RE MOVING ALONG QUICKLY TO
17 RESOLVE THE DISAGREEMENTS.

18 THE COURT: OKAY.

19 MS. MAROULIS: THAT'S CORRECT, YOUR
20 HONOR. WE HAVE A FEW TERMS AND SENTENCING THAT ARE
21 IN DISPUTE, BUT WE HOPE TO WRAP IT UP.

22 THE COURT: THANK YOU. I HOPE YOU WILL
23 DO THAT, BECAUSE I THINK BOTH SIDES ARE GOING TO
24 LOOK PRETTY SILLY, ESPECIALLY IF YOU'RE FIGHTING
25 OVER MINOR THINGS.

1 MR. JACOBS: IF WE DON'T REACH A
2 RESOLUTION, WE'LL HAVE A PROPOSAL FOR YOUR HONOR
3 ABOUT HOW TO NOT LOOK SILLY IN FRONT OF THE JURY.

4 THE COURT: OKAY. WITH REGARD TO THE
5 SEALING MOTIONS, I'M UNCLEAR ON WHETHER THESE ARE
6 ISSUES THAT WILL COME UP DURING THE TRIAL BECAUSE
7 THEY'RE DAMAGES EXPERT REPORT EXHIBITS, WHETHER
8 THEY'RE ALSO SORT OF RETROACTIVE TO THE SUMMARY
9 JUDGMENT AND MOTIONS IN LIMINE.

10 I ASSUME THE DAMAGES STUFF IS ACTUALLY
11 OVERLAPPING IN THE MOTIONS IN LIMINE AND IN TRIAL.

12 BUT IF THERE'S SOME WAY THAT WE COULD,
13 YOU KNOW, PRIORITIZE THE ONES FOR TRIAL FIRST -- I
14 MEAN, OBVIOUSLY WE'LL GET TO EVERYTHING AS SOON AS
15 WE CAN, BUT IT'S QUITE A BIT OF PAPER.

16 LET ME HEAR FROM YOU ALL AS TO WHETHER
17 IT'S RETROSPECTIVE -- YOU KNOW, THINGS THAT HAVE
18 ALREADY HAPPENED OR WHAT WILL BE AN ISSUE FOR THE
19 TRIAL?

20 MS. MAROULIS: YOUR HONOR, THERE ARE
21 THREE TYPES OF SEALING MOTIONS BEFORE THE COURT.

22 ONE SET IS THE RETROACTIVE MOTIONS WHERE
23 BOTH APPLE AND SAMSUNG FILED RENEWED MOTIONS TO
24 SEAL BASED ON YOUR HONOR'S SEALING ORDER FROM LAST
25 WEEK, SO THAT'S RETROACTIVE AND THERE'S A SMALL

1 HANDFUL OF DOCUMENTS THAT BOTH SIDES DESIGNATED.

2 AND THEN THERE ARE TWO MOTIONS, TWO SETS
3 OF MOTIONS THAT ARE PROACTIVE. ONE IS A SET OF
4 MOTIONS BY THIRD PARTIES, SOME OF WHOM ARE PRESENT
5 HERE, WHO WISH TO PROTECT CERTAIN PORTIONS OF
6 EXHIBIT 630 IN TRIAL.

7 AND THEN THERE'S A JOINT STATEMENT BY
8 APPLE AND SAMSUNG ABOUT THE PROTOCOL THAT THE
9 PARTIES WANT TO ESTABLISH TO PRESENT CONFIDENTIAL
10 INFORMATION DURING TRIAL, MOST OF WHICH IS
11 FINANCIAL INFORMATION, BUT THERE'S ALSO SOME SOURCE
12 CODE ISSUES AS WELL.

13 THE COURT: OKAY. BUT IT WASN'T CLEAR
14 FROM THE MOTIONS EXACTLY WHAT'S RETROACTIVE AND
15 WHAT'S PROACTIVE.

16 WITH REGARD TO THE THINGS THAT NEED TO BE
17 DECIDED FOR TRIAL, IS THAT -- CAN YOU GIVE ME AN
18 ECF NUMBER?

19 MS. MAROULIS: YES, YOUR HONOR. THE
20 DOCKET NUMBER 1414 IS CALLED "JOINT MOTION
21 REGARDING SEALING OF TRIAL EXHIBITS." IT'S SAMSUNG
22 AND APPLE'S PROPOSAL JOINTLY ABOUT HOW TO TREAT
23 FINANCIAL AND CERTAIN OTHER CONFIDENTIAL
24 INFORMATION DURING TRIAL.

25 AND AS YOUR HONOR WILL SEE, IT HAS A

1 BLUEPRINT FOR THE PARTIES MEETING AND CONFERRING
2 AND THEN SHOWN, IN CAMERA, THERE'S A SMALL SUBSET
3 OF POTENTIALLY NEED TO BE REDACTED TRIAL EXHIBITS.

4 AND THEN THE SECOND SET IS THE THIRD
5 PARTY MOTIONS, WHICH ARE MULTIPLE NUMBERS, BUT
6 THEY'RE BASICALLY ALL RELATED TO LICENSING
7 INFORMATION FROM THIRD PARTIES.

8 THE COURT: ALL RIGHT. SO THIS IS WHAT
9 I'D LIKE TO DO ON THE SEALING.

10 I'D LIKE TO -- BOTH SAMSUNG AND APPLE
11 HAVE ALREADY REQUESTED -- HAVE ALSO ALREADY FILED
12 SORT OF REVISED MOTIONS TO SEAL.

13 SO WHAT I'D LIKE TO DO IS TO GIVE SORT OF
14 GUIDELINES OF WHAT WOULD BE SEALABLE AND THEN YOU
15 CAN REFILE THEM AND DO THE REDACTIONS ACCORDINGLY.

16 SO SOURCE CODE THAT -- AND I'LL GIVE YOU,
17 MR. OLSON, AN OPPORTUNITY TO RESPOND TO THESE
18 CATEGORIES AS WELL. OKAY?

19 MR. OLSON: OKAY.

20 THE COURT: SOURCE CODE THAT HAS NOT IN
21 ANY WAY BEEN PUBLICLY DISCLOSED AND HAS BEEN
22 TREATED WITH PROPER TRADE SECRET PROTECTIONS WILL
23 BE SEALABLE.

24 AND IN THE FUTURE, I WILL NEED TO SEE THE
25 ACTUAL DOCUMENTS THAT YOU ARE SEEKING TO SEAL

1 VERSUS JUST A SUMMARY OR DESCRIPTION OF THEM.

2 SAME FOR, YOU KNOW, PRODUCT SCHEMATICS.

3 I'LL NEED TO ACTUALLY SEE THEM.

4 BUT IF THEY PREVIOUSLY DEALT WITH
5 NONDISCLOSURE AGREEMENTS AND PROPER EFFORTS WERE
6 MADE TO PRESERVE THE CONFIDENTIALITY, THAT IS
7 ANOTHER CATEGORY.

8 BASED ON THE NINTH CIRCUIT'S DECISION IN
9 ELECTRONIC ARTS, PRICING, ROYALTY RATES, MINIMUM
10 PAYMENT TERMS OF LICENSING AGREEMENTS WILL BE
11 SEALABLE.

12 AND I THINK TO DO OTHERWISE GOT THE
13 DISTRICT JUDGE REVERSED, SO I'M GOING TO FOLLOW THE
14 NINTH CIRCUIT PRECEDENT ON THAT.

15 NOW, THE NINTH CIRCUIT DECISION DID NOT
16 ADDRESS THE DURATION OF THE LICENSE, BUT I WILL
17 ALLOW THAT ALSO TO BE SEALED.

18 NOW, OBVIOUSLY IF THE LICENSE HAS IN ANY
19 WAY BECOME PUBLIC, YOU CAN'T SEAL IT.

20 THE PRODUCTION CAPACITY ISSUE ON THE SAME
21 BASIS AS THE RATIONALE SET FORTH IN ELECTRONIC ARTS
22 COULD BE SEALABLE, BUT I'LL HAVE TO SEE WHAT YOU'RE
23 ACTUALLY REQUESTING BECAUSE IF IT'S OVERBROAD, IT
24 WILL NOT BE SEALED.

25 AND THEN THE THIRD PARTY MARKET DATA,

1 NOW, THE SUMMARIES AND FIGURES THAT ARE GENERALLY
2 PUBLICLY AVAILABLE, THOSE ARE NOT SEALED.

3 BUT I GUESS THE REQUEST, IS IT IDC?
4 WHAT'S THE NAME OF THE ENTITY?

5 MR. MCELHINNY: IDC, YOUR HONOR.

6 THE COURT: I'M SORRY?

7 MR. JACOBS: IDC.

8 THE COURT: THEY JUST REQUESTED THAT
9 THEIR ACTUAL REPORTS THAT THEY SELL BE SEALED; IS
10 THAT CORRECT?

11 MR. JACOBS: THAT'S CORRECT, YOUR HONOR.

12 I THINK WHERE WE ENDED UP WITH THEM IS IF
13 IT'S A COMPLETE REPORT, THEN THEY WOULD LIKE IT
14 SEALED.

15 IF IT'S A DISTILLATION OR EXTRACTION OF
16 LIMITED INFORMATION, THEN THEY'RE OKAY WITH IT NOT
17 BEING SEALED.

18 THE COURT: ALL RIGHT. WELL, BECAUSE
19 THAT'S IDC'S LIVELIHOOD AND THEY SELL THE ACTUAL
20 REPORTS, THAT WILL BE SEALED.

21 BUT I ACTUALLY WILL WANT TO SEE THE
22 ACTUAL DOCUMENTS THAT YOU WANT.

23 THAT'S IT AS FAR AS CATEGORIES.

24 ALL THE STUFF ABOUT TAX ARRANGEMENTS,
25 ESPECIALLY WITH REGARD TO THE PARTIES IN THIS CASE,

1 YOU WILL NOT BE ABLE TO SEAL ALL OF YOUR OWN
2 FINANCIAL INFORMATION.

3 AND THE PARTIES WILL BE HELD TO AN EVEN
4 HIGHER STANDARD THAN THIRD PARTIES WHO DIDN'T
5 VOLUNTARILY CAUSE THIS LITIGATION.

6 SO THAT'S IT FOR THE CATEGORIES AND I'LL
7 LET EVERYONE COMMENT.

8 MR. OLSON?

9 MR. OLSON: YES, YOUR HONOR.

10 IT'S WORTHY OF NOTE THAT THE ELECTRONIC
11 ARTS CASE IS NOT A PUBLISHED DECISION, AND SO I
12 THINK THAT THE LICENSING AGREEMENTS, RESPECTFULLY,
13 I DON'T THINK RISE TO THE LEVEL OF A COMPELLING
14 REASON TO SEAL.

15 IT'S INTERESTING TO NOTE THAT SAMSUNG
16 ITSELF, IN ITS LETTERS TO THE LICENSORS, ACTUALLY
17 TOLD THEM, "WE DON'T SEE A COMPELLING REASON TO
18 SEAL THIS." THIS IS IN DOCUMENTS 1394 AND 1400.
19 IT'S EXHIBITS TO THOSE, THE LETTER FROM
20 MELISSA DALZIEL.

21 IT'S ALSO WORTHY OF NOTE THAT QUALCOMM
22 HAS PUBLICLY FILED THEIR LICENSING AGREEMENT,
23 INCLUDING THE FINANCIAL TERMS. THAT'S DOCUMENT
24 NUMBER 1394.

25 SO WHEN YOU LOOK AT THAT, I DON'T THINK

1 THAT THERE'S ANYTHING SEALABLE IN THAT.

2 AND I THINK THAT THE OTHER LICENSING
3 AGREEMENTS, ALTHOUGH OBVIOUSLY I HAVEN'T SEEN THEM,
4 ARE GOING TO BE THE SAME TYPE OF INFORMATION.

5 FINANCIAL INFORMATION JUST SIMPLY ISN'T A
6 SEALABLE TRADE SECRET OF THE SAME ILK AS THE SECRET
7 FORMULA OF CODE OR SOURCE CODE, AND WE AGREE WITH
8 THE WAY THE COURT DREW THE LINE AT THE PRETRIAL
9 CONFERENCE ON JULY 18TH WHEN THE COURT SAID --

10 THE COURT: YEAH, BUT A DISTRICT JUDGE
11 GOT REVERSED IN ELECTRONIC ARTS. YOU WANT ME TO
12 GET REVERSED?

13 MR. OLSON: I DON'T WANT YOU TO GET
14 REVERSED, YOUR HONOR.

15 THE COURT: WELL, THAT JUDGE GOT REVERSED
16 IN ELECTRONIC ARTS. I HEAR YOU SAYING THAT'S NOT A
17 PUBLIC DECISION, BUT THAT AND KAMAKANA IS SORT OF
18 ALL I AS GUIDANCE FROM THE CIRCUIT.

19 SO I'D RATHER RELY ON SOMETHING FROM THE
20 CIRCUIT, EVEN IF IT'S NOT PUBLISHED, THAN NOTHING.

21 MR. OLSON: AND KAMAKANA WHICH IS, OF
22 COURSE, PUBLISHED AND REALLY IS THE LANDMARK NINTH
23 CIRCUIT DECISION BASICALLY SEALED NOTHING AND THE
24 NINTH CIRCUIT APPLAUDED THE MAGISTRATE FOR DOING A
25 PAINSTAKING DOCUMENT-BY-DOCUMENT REVIEW.

1 THE COURT: WELL, THAT WILL BE DONE HERE.
2 IT WILL BE DONE DOCUMENT-BY-DOCUMENT.

3 IT'S JUST THAT THIS IS SUCH A VOLUMINOUS
4 CASE, I THINK THE PROCESS WOULD BE BETTER TO GIVE
5 SOME GENERAL GUIDELINES, HAVE THEM REFILE A MORE
6 NARROW REQUEST, AND THEN I'LL LOOK AT EACH DOCUMENT
7 INDIVIDUALLY.

8 MR. OLSON: AND THE OTHER THING THAT I
9 WOULD SAY, YOUR HONOR, IS THAT THE APPLE VERSUS
10 CYSTAR CASE I THINK IS RELEVANT. THAT'S A CASE
11 WHERE JUDGE ALSUP HAD NOT MADE THE REQUISITE
12 FINDINGS AND THE NINTH CIRCUIT REVERSED BECAUSE THE
13 FINDINGS HADN'T BEEN MADE. THEY WERE TOO
14 CONCLUSORY.

15 AND ON REMAND, AFTER TAKING A MORE
16 CAREFUL LOOK, JUDGE ALSUP SEALED NOTHING.

17 SO I THINK THAT'S BASICALLY THE WAY THE
18 CIRCUIT HAS HANDLED THINGS, AND I OBVIOUSLY CAN'T
19 MAKE PREDICTIONS, BUT I THINK IF YOU SEAL NOTHING,
20 YOU'D BE AFFIRMED AND NOT REVERSED.

21 AND THEN ON THEIR OWN FINANCIAL
22 INFORMATION --

23 THE COURT: BECAUSE YOU THINK IN
24 ELECTRONIC -- THAT THE ELECTRONIC ARTS DECISION IS
25 JUST AN OUTLIER, OR YOU THINK THE CIRCUIT JUDGES ON

1 THAT PANEL --

2 MR. OLSON: I THINK THAT WHEN YOU LOOK AT
3 THE TYPES OF AGREEMENTS HERE, MANY OF THEM ARE
4 OUTDATED.

5 YOU KNOW, FOR EXAMPLE, I THINK IT'S
6 QUALCOMM, THAT'S GOING BACK TO 1993.

7 AND, YOU KNOW, THE TEMPORAL ASPECT OF
8 THIS, WHEN YOU'RE TRYING TO SEAL SOMETHING FROM
9 1993 AND YOU'RE SAYING IT'S A TRADE SECRET -- AND
10 THE SAME THING WITH CAPACITY. I MEAN, APPLE SAYS
11 "WE WANT TO SEAL CAPACITY GOING BACK TO 2010 AND
12 ENDING IN THE FIRST QUARTER OF 2012."

13 I THINK WHAT CAPACITY WAS IN 2010 IS NOT
14 A TRADE SECRET NOW. CIRCUMSTANCES ARE PROBABLY
15 GOING TO BE DIFFERENT.

16 AND WE APPRECIATE WHAT THE COURT HAS SAID
17 ABOUT THE PARTIES' OWN FINANCIAL INFORMATION AND
18 PROFIT MARGIN AND SO I'M NOT GOING TO ARGUE WITH A
19 TENTATIVE THAT APPEARS TO BE IN OUR FAVOR ON THAT,
20 OTHER THAN TO SAY THAT PROFIT MARGIN WAS DISCLOSED
21 YESTERDAY AND, DESPITE THE CONTENTIONS OF
22 IRREPARABLE HARM ON THE PART OF APPLE, THEIR STOCK
23 WENT UP \$10 TODAY.

24 THE COURT: WELL, FOR THE PARTIES,
25 THEY'RE GOING TO BE -- THEIR STUFF IS GOING TO BE

1 PUBLIC. I'M REALLY MORE CONCERNED ABOUT THESE
2 THIRD PARTIES.

3 OKAY. YOU RAISE A GOOD POINT, THOUGH.
4 AT WHAT POINT DOES THIS INFORMATION BECOME STALE
5 AND ESSENTIALLY LOSE ITS TRADE SECRET NATURE?

6 LET ME HEAR FROM THE PARTIES ON THAT,
7 BECAUSE I'M NOT GOING TO LET YOU GO BACK AND --
8 LIKE MR. OLSON SAID, WHAT MAKES A 20-YEAR-OLD
9 DOCUMENT STILL TRADE SECRET?

10 MR. JACOBS: I WON'T ARGUE FOR THE
11 20-YEAR-OLD DOCUMENT, YOUR HONOR, BUT I HAVE TO TRY
12 TO DO A COUPLE OF THINGS WITH RESPECT TO YOUR
13 RULING SO FAR.

14 THE -- FIRST OF ALL, LET'S DISTINGUISH
15 BETWEEN THE FILINGS THAT WERE MADE ALREADY. THOSE
16 FILINGS WERE MADE ON THE UNDERSTANDING THAT THE
17 COURT WOULD FOLLOW ITS PRACTICE OF, IF WE WERE
18 TARGETED, WE COULD MAINTAIN SENSITIVE FINANCIAL
19 INFORMATION, SENSITIVE MARKET RESEARCH UNDER SEAL.

20 AND SO IF WE'RE TALKING ABOUT -- I THINK,
21 THOUGH, THE WAY I HEAR YOUR HONOR, WHAT YOU WANTED
22 US TO DO IS EVEN AS TO THE PAST, GO BACK AND
23 REFILE, BUT LEAVE THE COST INFORMATION, THE
24 SENSITIVE MARKET RESEARCH IN THE PUBLIC FILE, AND
25 THAT WOULD REALLY WREAK HAVOC.

1 THE PRINCIPLE OF ELECTRONIC ARTS IS THAT
2 TRADE SECRETS SHOULD BE PROTECTED IN THE COURSE OF
3 LITIGATION LIKE THIS, AND IT WAS JUST THAT THAT
4 LICENSE AGREEMENT WAS THE EXAMPLE AT THE TIME.

5 BUT, FOR EXAMPLE, APPLE'S COSTING DATA --
6 I SUSPECT YOU'LL HEAR SIMILARLY FROM SAMSUNG -- YOU
7 HAVE IN OUR JOINT FILINGS, ITS COSTING DATA,
8 THAT -- TO LET THE COSTING INFORMATION OR THE
9 MARGIN INFORMATION, THE KINDS OF INFORMATION THAT
10 GO TO THE BASIC ECONOMICS OF THE MANUFACTURER OF
11 PARTICULAR PRODUCTS OUT ON THE MARKET GIVES AN
12 ADVANTAGE TO THIRD PARTIES THAT THEY SHOULDN'T
13 HAVE, THAT THEY HAVE NO RIGHT TO HAVE.

14 AND IT'S NOT A PUBLIC INFORMATION ISSUE.
15 IT DOESN'T HELP VENTILATE OR ILLUMINATE THE ISSUES
16 THAT ARE BEING TRIED HERE FOR THAT INFORMATION TO
17 BE SPILLED ON THE PUBLIC RECORD.

18 SO WE WOULD STRONGLY, STRONGLY BESEECH
19 YOUR HONOR TO ALLOW US TO MAKE A PARTICULARIZED
20 SHOWING ON A DOCUMENT-BY-DOCUMENT BASIS THAT YOU
21 WERE SUGGESTING EVEN AS TO OTHER SENSITIVE
22 CATEGORIES, AND TO DO IT FOR THE FINANCIAL
23 INFORMATION, ESPECIALLY THE FINANCIAL INFORMATION
24 THAT WE'VE SOUGHT TO BE SEALED RETROSPECTIVELY.

25 GOING FORWARD, WE HAVE A PROPOSED --

1 ACTUALLY, IT MAY HAVE COME IN JUST AS YOU WERE
2 GETTING READY TO COME OUT ON THE BENCH.

3 THE COURT: OH, YOU JUST FILED -- YOU
4 FILED, LIKE, A HUNDRED -- THERE ARE A HUNDRED
5 ENTRIES ON THE DOCKET SINCE, WHAT, WEDNESDAY?

6 MR. JACOBS: WE FILED A PROPOSED ORDER
7 JOINTLY WITH SAMSUNG. WE'VE HEARD YOUR HONOR ABOUT
8 WORKING TOGETHER TO TRY AND MAKE THIS A MANAGEABLE
9 PROCESS.

10 AND GOING FORWARD, WE HAVE A PROTOCOL FOR
11 THESE CATEGORIES OF INFORMATION AS WELL.

12 BUT THE COST INFORMATION IN PARTICULAR,
13 THE SENSITIVE FINANCIAL INFORMATION THAT THE
14 COMPANIES MAINTAIN EXTREMELY -- THAT THE COMPANY
15 MAINTAINS EXTREMELY CLOSELY HELD WITHIN APPLE, WE
16 WOULD ASK THAT YOUR HONOR CONSIDER IT AS -- THAT WE
17 HAVE DEMONSTRATED THAT IT IS TRADE SECRET, THAT IT
18 FITS WITHIN THE APPLICABLE STANDARDS, THE NINTH
19 CIRCUIT DECISIONAL LAW, AND THAT WE SHOULD BE ABLE
20 TO MAINTAIN THAT UNDER SEAL.

21 GOING RETROSPECTIVELY, WE BELIEVE WE'VE
22 MADE THE SHOWING.

23 BUT WE WOULD MAKE IT ON A
24 DOCUMENT-BY-DOCUMENT BASIS. PROSPECTIVELY WE WOULD
25 FOLLOW THE PROTOCOL SET FORTH IN THE PROPOSED ORDER

1 THAT I WAS REFERRING TO A MINUTE AGO.

2 MS. MAROULIS: YOUR HONOR, I CONCUR WITH
3 WHAT MR. JACOBS SAID AND I WILL NOT REPEAT
4 ANYTHING, BUT SAMSUNG SUBMITTED MULTIPLE
5 DECLARATIONS EXPLAINING HOW SENSITIVE THE COST DATA
6 IS THAT'S BEING PART OF THE MOTIONS TO SEAL.

7 THE COURT: BUT ONE OF THE THINGS THAT
8 YOU SOUGHT TO SEAL WAS ACTUALLY IN YOUR S.E.C.
9 FILINGS.

10 MS. MAROULIS: YOUR HONOR, THE 15
11 EXHIBITS THAT WE SUBMITTED WITH OUR MOTION WERE
12 VERY DETAILED COST EXPLANATIONS, AND THE CASE THAT
13 WE CITED IN OUR BRIEFS, THE BOWERMAN BRAS VERSUS
14 NIKE, IS EXACTLY ON POINT WHERE COST OF GOODS SOLD,
15 PRICING, AND OTHER SIMILAR ISSUES WERE ILLUMINATED.

16 THE DOCUMENTS WE SEEK TO SEAL ARE
17 STEP-BY-STEP BLUEPRINTS THAT A COMPETITOR CAN GET
18 THEIR HANDS ON AND BE ABLE TO PRICE SAMSUNG OR
19 APPLE OUT BECAUSE THEY CAN COMPETE UNFAIRLY BASED
20 ON THAT.

21 AND AS MR. JACOBS SAID, IT WOULD NOT GIVE
22 THE PUBLIC ANY ADVANTAGE BECAUSE THEY WOULDN'T
23 UNDERSTAND THOSE DOCUMENTS ANYWAY.

24 BUT THE PARTIES WORKED VERY CLOSELY AND
25 WILL CONTINUE TO WORK TO SEAL ON A VERY, VERY SMALL

1 SUBSET OF WHAT WAS PREVIOUSLY BEFORE THE COURT, AND
2 WE DO MAKE A JOINT PLEA FOR PROTECTION OF THE
3 FINANCIAL DATA, IN PARTICULAR THE PRICING AND
4 COSTING INFORMATION.

5 THE COURT: I'M NOT PERSUADED. BOTH
6 SIDES ARE REQUESTING INJUNCTIVE RELIEF, WHICH HAS A
7 VERY SIGNIFICANT IMPACT ON CONSUMERS, ON MARKETS,
8 AND I WOULD ASSUME THAT WHAT MIGHT HAPPEN IN THIS
9 TRIAL CAN THEN AFFECT OTHER ATTEMPTS TO GET OTHER
10 PARTIES TO LICENSE, SO IT'S GOING TO HAVE AN IMPACT
11 ON WHAT OTHER MARKET PLAYERS MAY HAVE TO PAY FOR
12 VARIOUS INTELLECTUAL PROPERTY THAT'S IN THIS CASE.

13 SO I THINK THAT THE PUBLIC'S INTERESTS IN
14 ACCESSING THIS INFORMATION IS VERY, VERY HIGH.

15 SO THE CATEGORIES THAT I SAID AT THE
16 BEGINNING WILL REMAIN.

17 NOW, I THINK WE MAY HAVE SOME OF THE
18 THIRD PARTIES HERE. DO THEY WANT TO BE HEARD?

19 MR. MCELHINNY: MAY I JUST FOR
20 CLARIFICATION PURPOSES, YOUR HONOR?

21 THE COURT: YES.

22 MR. MCELHINNY: AND FRANKLY, JUST TO MAKE
23 OUR RECORD HERE, WHAT WE WOULD PREFER TO DO IS TO
24 MAKE A SPECIFIC AND SPECIFIED SUBMISSION TO YOU, WE
25 CAN IDENTIFY IT FOR YOU SO YOU KNOW WHAT IT IS, BUT

1 WE WOULD PREFER TO MAKE A RECORD OF WHY WE THINK
2 SPECIFIC INFORMATION IS CONFIDENTIAL AND GET A
3 RULING FROM YOUR HONOR SO WE CAN SEEK REVIEW FROM
4 IT.

5 RIGHT NOW WE'VE GOT SORT OF A BROAD
6 CATEGORY OF IT AND I'M -- I MAY HAVE A RECORD, BUT
7 WE WOULD PREFER TO GIVE YOU AN OPPORTUNITY TO
8 ACTUALLY SEE THE INFORMATION AND REFLECT ON IT SOME
9 MORE.

10 THE COURT: WHEN DO YOU NEED THIS, ALL
11 THIS SEALED INFORMATION? IS IT REALLY IN THE
12 DAMAGES PORTION OF YOUR CASE? DOES ANYONE INTEND
13 TO GO INTO ANY OF THIS DURING OPENINGS, OR NOT?

14 MR. JACOBS: I THINK WE'RE -- I THINK
15 MAYBE WE HAVEN'T BEEN CLEAR.

16 RETROSPECTIVELY, WE HAVE SOME OF THESE
17 DOCUMENTS IN VARIOUS MOTIONS THAT WE'RE SEEKING --
18 THAT THE COURT ORDERED UNSEALED UNLESS WE MAKE A
19 SHOWING.

20 THE COURT: UM-HUM.

21 MR. JACOBS: PROSPECTIVELY, WE HAVE A
22 PROPOSED PROTOCOL THAT WOULD HAVE INFORMATION THAT
23 IS ACTUALLY SHOWN TO THE JURY BE MADE PUBLICLY
24 AVAILABLE ON THE PUBLIC RECORD.

25 THE PARTIES WOULD MEET AND CONFER -- THIS

1 IS NOW DURING TRIAL.

2 THE PARTIES WOULD MEET AND CONFER AND
3 PRESENT TO THE COURT BOTH THE PORTION THAT WE
4 BELIEVE THE JURY SAW THAT WOULD GO ON THE PUBLIC
5 RECORD, AND THE UNDERLYING DOCUMENT, INFORMATION
6 THE JURY DIDN'T SEE, DIDN'T NEED TO SEE, OBVIOUSLY
7 AND THE PUBLIC DOESN'T NEED TO SEE.

8 AND THEN THE COURT WOULD RULE AS TO THOSE
9 DOCUMENTS WHETHER WE'VE ADEQUATELY PRESENTED TO THE
10 PUBLIC THE INFORMATION THE PUBLIC NEEDS TO KNOW
11 BASED ON THE TRIAL THAT TOOK PLACE.

12 THIS IS, FOR EXAMPLE, IN THE LOST PROFITS
13 CONTEXT WHERE WE'RE SHOWING OUR PROFITS, OR IN THE
14 PROFITS EARNED CONTEXT WHERE WE'RE SHOWING
15 SAMSUNG'S PROFITS.

16 THAT WOULD -- THAT WOULD BE THE PROPOSAL
17 GOING FORWARD.

18 AND YOUR HONOR IS EXACTLY RIGHT. WE
19 DON'T NEED RULINGS -- UNDER THIS PROPOSED PROTOCOL,
20 WE NEED NO RULINGS RIGHT NOW BECAUSE WE'RE GOING TO
21 CONTINUE TO WORK TOGETHER TO FIGURE OUT IF WE CAN
22 EVEN ADVANCE THE BALL MORE THAN THIS.

23 THE COURT: WELL, I GUESS WHAT I DON'T
24 UNDERSTAND IS YOU'RE SAYING THAT YOU WILL HAVE A
25 DOCUMENT THAT HAS THE INFORMATION THAT YOU NEED FOR

1 THE TRIAL, THAT YOU ARE COMFORTABLE PLACING IN THE
2 PUBLIC RECORD AND PRESENTING TO THE JURY.

3 SO THEN WHY DO WE EVEN NEED TO BOTHER
4 WITH THAT UNDERLYING DOCUMENT THAT YOU BELIEVE HAS
5 INFORMATION THAT'S MORE PROPERLY SEALED IF THE JURY
6 DOESN'T NEED TO SEE IT?

7 MR. JACOBS: IT MAY BE THAT, OVER THE
8 NEXT COUPLE OF DAYS, WE CAN GET TO THAT PLACE.

9 RIGHT NOW, ON OUR EXHIBIT LIST, WE HAVE
10 SAMSUNG EXHIBITS. ON SAMSUNG'S EXHIBIT LIST, THEY
11 HAVE APPLE EXHIBITS.

12 ON SAMSUNG'S EXHIBIT LIST, THE APPLE
13 EXHIBITS ARE THICK REPORTS OR VERY SENSITIVE, FOR
14 EXAMPLE, CAPACITY INFORMATION WHICH YOU'VE
15 ADDRESSED.

16 SO THAT'S THE CONCERN GOING FORWARD IS WE
17 NEED TO HAVE SOMETHING IN PLACE AS A BASELINE FOR
18 TRIAL, AND THAT'S -- THAT'S THE PROPOSAL WE HAVE
19 MADE TO THE COURT.

20 THE COURT: WELL, I THOUGHT I HAD ALREADY
21 REQUESTED THAT BACK ON TUESDAY --

22 MR. JACOBS: YES.

23 THE COURT: -- THAT IF YOU DON'T NEED
24 SOME UNDERLYING DOCUMENT, THAT WE JUST NOT BOTHER
25 WITH IT AND YOU CULL OUT THE PIECES OF INFORMATION

1 THAT YOU DO NEED AND THEN JUST BE PUBLIC WITH IT.

2 MR. JACOBS: AND THAT, IN EFFECT, IS OUR
3 PLAN. WE DON'T HAVE -- WE HAVEN'T REACHED -- THE
4 STIPULATION -- THERE'S A DETAILED STIPULATION GOING
5 BACK AND FORTH --

6 THE COURT: OKAY.

7 MR. JACOBS: -- SEPARATE.

8 WE KIND OF NEED A BASELINE RIGHT NOW THAT
9 WOULD GOVERN WHAT WOULD HAPPEN AT TRIAL.

10 BUT -- AND I GUESS I'M -- BECAUSE YOU CAN
11 SEE THERE'S A PRETTY STRONG SHARED INTEREST HERE,
12 I'M OPTIMISTIC WE'LL BE ABLE TO REACH THOSE
13 STIPULATIONS.

14 BUT YOU ALSO ASKED FOR AN ORDER GOVERNING
15 WHAT WOULD HAPPEN AT TRIAL HERE. WE UNDERSTOOD
16 THAT YOU DID, AND SO WE WOULD BE PREPARING AN ORDER
17 GOVERNING WHAT WOULD HAPPEN AT TRIAL.

18 THE COURT: WHY DON'T WE DO THIS, THEN.
19 I THINK WE HAVE SOME THIRD PARTIES WHO WISH TO BE
20 HEARD.

21 MR. HEMMINGER: GOOD AFTERNOON, YOUR
22 HONOR. STEVE HEMMINGER FROM ALSTON & BIRD ON
23 BEHALF OF NOKIA.

24 REALLY ONLY ONE COMMENT WITH REGARD TO
25 YOUR HONOR'S RULING, AND THIS IS WITH REGARD TO

1 REUTERS' ARGUMENT THAT SOME OF THE LICENSE
2 AGREEMENTS THAT MAY BE OUT OF FORCE ARE SOMEHOW
3 STALE, AND THAT THE STALENESS OR THE LENGTH OF TIME
4 THAT MAY HAVE PASSED SHOULD BE THE BENCHMARK TO
5 DETERMINE WHETHER OR NOT THE INFORMATION SHOULD BE
6 SEALED.

7 BUT WE SUBMIT THAT TIME IS NOT THE ACTUAL
8 CRITERIA TO USE. TO USE THEIR EXAMPLE, THE
9 COCA-COLA TRADE SECRET, I DON'T KNOW IF IT'S A
10 HUNDRED YEARS OR MORE, BUT THAT'S BEEN AROUND FOR A
11 LONG TIME.

12 I THINK THAT WE BELIEVE THAT THE --
13 THE COURT: DOESN'T THE TECHNOLOGY GET
14 OBSOLETE? AND ARE YOU MAKING THAT ARGUMENT FOR
15 EXPIRED LICENSES AS WELL? YOU THINK THAT EVEN IF
16 THE DURATION HAS LONG ENDED, IT'S STILL A TRADE
17 SECRET?

18 MR. HEMMINGER: I THINK WHETHER OR NOT
19 THE INFORMATION IN A LICENSE IS A TRADE SECRET IS
20 NOT DEPENDENT UPON WHETHER IT'S EXPIRED.

21 FOR EXAMPLE, AT LEAST WITH REGARD TO
22 NOKIA, THEY HAVE HAD LICENSES, SEVERAL LICENSE
23 AGREEMENTS WITH SAMSUNG. QUITE FRANKLY, THE TERMS
24 ARE, ARE NOT PRECISE BECAUSE THEY DEAL WITH
25 PRODUCTS.

1 BUT SETTING THAT ASIDE, THE -- AN
2 AGREEMENT AT ONE POINT IN TIME THAT WOULD EXPIRE,
3 THEN FOLLOWED BY A SUBSEQUENT LICENSE AGREEMENT,
4 THE ORIGINAL TERMS ARE CERTAINLY INSTRUCTIVE AS TO
5 WHAT THE PARTIES ARE DOING, JUST AS IN E.A.

6 IN OTHER WORDS, IF YOU KNOW A PATTERN
7 OVER TIME AS TO HOW A PARTY IS LICENSING ITS
8 PATENTS, THE FACT THAT OTHER PARTIES, SITTING
9 ACROSS THE TABLE FROM THEM, KNOW, FOR EXAMPLE, WHAT
10 NOKIA'S TERMS ARE, BUT NOKIA SITS THERE AND HAS NO
11 CLUE AS TO WHAT THEIR TERMS ARE, THAT PUTS THEM AT
12 A DISTINCT DISADVANTAGE.

13 SO OUR POINT IS YOU CANNOT LOOK JUST AT
14 WHETHER OR NOT THE LICENSE HAS TERMINATED OR NOT.

15 YOU HAVE TO LOOK AT WHETHER OR NOT THE
16 INFORMATION IS STILL A TRADE SECRET; IN OTHER
17 WORDS, IF IT WOULD STILL BE SOMETHING THAT WOULD
18 PROVIDE A COMPETITIVE ADVANTAGE AND COMPETITIVE
19 HARM ON THE FLIP SIDE IF IT WAS KNOWN BY OTHERS.

20 SO THE --

21 THE COURT: I'M SORRY TO INTERRUPT YOU.

22 SO THE DECLARATION IS GOING TO HAVE TO
23 ESTABLISH THAT. THE DECLARATION IN SUPPORT OF
24 SEALING IS GOING TO HAVE TO ESTABLISH WHY AN
25 EXPIRED LICENSE IS STILL A TRADE SECRET AND IS

1 GOING TO HAVE TO LAY OUT AND MAKE A COMPELLING
2 REASON SHOWING.

3 MR. HEMMINGER: OKAY. WHICH WE BELIEVE
4 NOKIA DID.

5 AND THE LAST POINT, THERE WAS A COMMENT
6 SAYING THAT SAMSUNG INDICATED THERE WAS NO
7 COMPELLING REASONS IN THEIR LETTER.

8 I JUST SAW, PRIOR TO COMING IN HERE,
9 THEIR STIPULATION, AND I BELIEVE SAMSUNG AGREED IN
10 THE STIPULATION WITH APPLE THAT THERE WERE
11 COMPELLING REASONS TO SEAL THE LICENSE AGREEMENTS.

12 SO I -- AT LEAST, THAT WAS MY
13 RECOLLECTION OF THE QUICK READING.

14 BUT IN ANY EVENT, WHETHER SAMSUNG
15 BELIEVES THE INFORMATION ABOUT NOKIA IS A TRADE
16 SECRET OR NOT IS MOOT.

17 THE QUESTION IS WHETHER IT SATISFIED THE
18 TRADE SECRET REQUIREMENTS FOR NOKIA, WHICH IN
19 NOKIA'S CASE IT CERTAINLY DOES.

20 AND THEN I HAVE A PROCEDURAL QUESTION.

21 ARE YOU SUGGESTING WE NOW HAVE TO REFILE
22 OUR MOTIONS TO SEAL? OR --

23 THE COURT: WELL, TELL ME WITH REGARD
24 TO -- MY UNDERSTANDING OF THIRD PARTIES IS THAT
25 THEY WERE MOSTLY CONCERNED WITH THREE DIFFERENT

1 TYPES OF INFORMATION WITH REGARD TO THE LICENSES
2 AND THEY EFFECTIVELY WERE THE DURATION, THE
3 COMPENSATION TERM, AND --

4 WHAT WAS THE THIRD CATEGORY OF
5 INFORMATION THAT YOU ALL WANTED TO SEAL?

6 MR. HEMMINGER: AND THE PRICING AND THE
7 PAYMENT.

8 THE COURT: I'M SORRY?

9 MR. HEMMINGER: AND THE PAYMENT TERMS.

10 THE COURT: RIGHT. I PUT THAT IN THE
11 COMPENSATION CATEGORY.

12 MR. HEMMINGER: RIGHT.

13 THE COURT: THOSE ARE FINE.

14 MR. HEMMINGER: OKAY.

15 THE COURT: SO AS FAR AS THE THIRD
16 PARTIES ARE CONCERNED, YOUR REQUEST TO PROTECT
17 THOSE, YOU KNOW, ROYALTY RATE AND THE NO PAYMENT
18 TERM, COMPENSATION TERM, HOWEVER IT'S STRUCTURED
19 AND THE DURATION PRICING, THAT'S FINE.

20 MR. HEMMINGER: OKAY. THANK YOU, YOUR
21 HONOR.

22 THE COURT: SO ANY OF THE OTHER THIRD
23 PARTY WHO WISHES TO BE HEARD?

24 MR. MCCAULEY: GOOD AFTERNOON, YOUR
25 HONOR. ROBERT MCCAULEY ON BEHALF OF PHILIPS

1 ELECTRONICS.

2 I'M SORRY, YOUR HONOR. THERE'S BEEN SOME
3 DISCUSSION ABOUT LICENSES THAT HAVE BEEN EXPIRED
4 AND I'M WONDERING WHETHER, IN VIEW OF THE COURT'S
5 COMMENTS THAT YOU JUST MADE, THAT THE STALENESS
6 ISSUE, AS THE COURT CALLED IT, IS NOT GOING TO
7 OVERRIDE A DECLARATION THAT SAYS THAT THIS IS
8 COMPETITIVELY SENSITIVE INFORMATION, AND THAT IF IT
9 WERE ACQUIRED BY COMPETITORS, IT COULD IRREPARABLY
10 HARM, FOR INSTANCE, MY CLIENT.

11 THE COURT: IF YOU CAN MAKE THE
12 APPROPRIATE SHOWING IN YOUR DECLARATION THAT THE
13 EXPIRATION OF THE LICENSE IS NOT DISPOSITIVE, YEAH,
14 THAT'S RIGHT.

15 MR. MCCAULEY: THANK YOU, YOUR HONOR.

16 THE COURT: OKAY. ANY OTHER THIRD PARTY
17 WHO WISHES TO BE HEARD?

18 MR. KELLEY: YES, YOUR HONOR.

19 CHRISTOPHER KELLEY FOR INTEL.

20 AMONG THE THIRD PARTIES, THEY'RE A LITTLE
21 UNIQUELY SITUATED IN THAT WE HAVE NOT ONLY AN
22 INTERESTING LICENSE AGREEMENT THAT IS POTENTIALLY
23 IN THE CASE, BUT ALSO HAVE TECHNICAL INFORMATION AS
24 WELL THAT THE PARTIES HAVE INDICATED THEY MAY PUT
25 INTO EVIDENCE.

1 SO THE PROCEDURES THAT THE PARTIES ARE
2 ATTEMPTING TO WORK OUT COULD BEAR ON OUR TECHNICAL
3 INFORMATION.

4 I ALSO DISCOVERED THAT THERE WAS, WITH
5 REGARD TO THE RETROACTIVE SEALING, THAT WE HAD
6 FILED A MOTION THAT DEALT WITH SOME OF THAT, BUT I
7 DISCOVERED THAT THERE WERE A FEW ADDITIONAL
8 DOCUMENTS THAT WE HAD MISSED THAT WERE FILED, AND
9 SO I WANT TO ADD THOSE TO OUR MOTION AS WELL.

10 SO FROM MY PERSPECTIVE, I THINK WE WANT
11 TO TAKE ADVANTAGE OF THE OPPORTUNITY TO AT LEAST
12 UPDATE OUR MOTION TO SEAL.

13 SO, AGAIN, WE'RE HEARING WHAT THE COURT
14 WANTED IN TERMS OF SCHEDULE FOR THAT.

15 BUT THEN ALSO, WE -- PENDING WHAT THE
16 PARTIES WORK OUT, WE NEED TO BE INVOLVED IN
17 WHATEVER PROCESS THEY COME UP WITH IN REGARD TO OUR
18 TECHNICAL INFORMATION TO THE EXTENT THAT THAT'S
19 GOING TO COME INTO EVIDENCE.

20 THE COURT: SO WHO WANTS TO REDO THEIR
21 SEALING MOTION, OTHER THAN THE TWO PARTIES AND
22 INTEL? ANYONE ELSE? OR IS EVERYONE ELSE SATISFIED
23 WITH WHAT THEY HAVE SUBMITTED?

24 MR. SCHWARZ: YOUR HONOR, DAVID SCHWARZ
25 FOR RESEARCH IN MOTION.

1 JUST -- I CAN PROBABLY ANSWER THE COURT'S
2 QUESTION WITH A REQUEST FOR CLARIFICATION. THE
3 SUPPORTING DECLARATION WHICH RIM PROVIDED DID SPEAK
4 DIRECTLY TO THE ONGOING AND IMPORTANT CURRENT VALUE
5 OF THE NEGOTIATIONS WITH RESPECT TO LICENSES THAT
6 HAVE ALREADY BEEN ENTERED. WE MADE THAT SHOWING IN
7 THE DECLARATION.

8 WE'D LIKE THE COURT'S GUIDANCE AS TO
9 WHETHER OR NOT THE FACT THAT OUR DECLARANT AND OUR
10 COMPANIES BELIEVE THAT THAT INFORMATION, WITH
11 RESPECT TO THAT PRIOR LICENSE, CONTINUES TO BE
12 HIGHLY RELEVANT IN TERMS OF HOW A COUNTERPARTY
13 WOULD ASSESS THE DIRECTION OF THE NEGOTIATION AND
14 THE TERMS, FRANKLY, THAT RIM WOULD BE PREPARED TO
15 ACCEPT TO GRANT A LICENSE.

16 I THINK THAT SHOWING HAS BEEN MADE. THE
17 COURT'S GUIDANCE WITH RESPECT TO WHAT ADDITIONAL
18 INFORMATION IT WOULD REQUIRE WOULD BE WELCOME.

19 BUT WE BELIEVE THAT THAT WAS A SHOWING
20 SUFFICIENT TO MEET THE COURT'S CONCERNS ABOUT THE
21 CURRENT VALUE OF THE LICENSE, REGARDLESS OF THE
22 DURATION ISSUE.

23 THE COURT: I APOLOGIZE. I DON'T HAVE
24 SPECIFIC KNOWLEDGE OF EXACTLY WHAT INFORMATION --
25 WHEN YOU SAY "CURRENT VALUE," YOU'RE NOT SAYING THE

1 COMPENSATION STRUCTURE LIKE THE PRICING, THE
2 ROYALTY RATE, THE MINIMUM PAYMENT TERM? THAT'S NOT
3 WHAT YOU'RE REFERRING TO? WHAT ARE YOU REFERRING
4 TO?

5 MR. SCHWARZ: I'M REFERRING TO THE NOTION
6 THAT A COUNTERPARTY, IN THE COURSE OF NEGOTIATION,
7 IF ARMED WITH INFORMATION WITH RESPECT TO WHAT WAS
8 IN A PRIOR LICENSE AGREEMENT, WOULD HAVE AN
9 ASYMMETRICAL AND UNEVEN BARGAINING ADVANTAGE
10 AGAINST RIM OR ANY OTHER PARTIES BECAUSE IT KNOWS
11 WHAT WAS BARGAINED FOR IN A PRIOR LICENSE, AND
12 INDEED, IT MAY RELATE TO PATENTS OR PATENT
13 PORTFOLIOS THAT ARE 20 YEARS IN DURATION.

14 THE COURT: OH. YOU'RE JUST SAYING THAT
15 YOUR MOTION WAS GEARED SOLELY TO CURRENT LICENSING
16 TERMS AND YOU WANT TO HAVE IT -- I'M UNCLEAR.

17 MR. SCHWARZ: NO, NO.

18 THE COURT: WHAT IS IT THAT YOU'RE
19 REQUESTING?

20 MR. SCHWARZ: THAT THE EXISTENCE OF A
21 LICENSING AGREEMENT, NO MATTER WHAT THE DURATION IS
22 OR THE DATE OF ENTRY, IS OF CURRENT RELEVANCE IN A
23 NEGOTIATION.

24 WHY? BECAUSE THEY WILL KNOW THAT A
25 LICENSE AGREEMENT THAT WAS ENTERED ON SUCH-AND-SUCH

1 A DATE WOULD SPEAK TO AND REVEAL THE NEGOTIATING
2 STRATEGIES AND THE TERMS UPON WHICH THE COMPANY
3 WOULD BE PREPARED TO ENTER INTO SUCH AGREEMENTS.

4 SO IT MATTERS TODAY FOR NEGOTIATIONS THAT
5 ARE ONGOING IF THE COUNTERPARTY IS AWARE OF WHAT
6 MIGHT HAVE BEEN IN A PRIOR LICENSE, AND THAT'S
7 INDEPENDENT OF THE QUESTION OF WHEN THAT WOULD
8 EXPIRE.

9 THE COURT: OKAY. SO YOUR QUESTION IS
10 JUST CAN YOU SEAL THE MERE FACT OF THE EXISTENCE OF
11 A LICENSE?

12 MR. SCHWARZ: NO, YOUR HONOR.

13 THE COURT: THEN WHAT? I'M STILL NOT
14 CLEAR.

15 MR. SCHWARZ: I'M FOCUSING PURELY ON THE
16 QUESTION OF THE EXPIRATION ISSUE, AND THE POINT
17 THAT I'M MAKING IS THAT IN OUR SHOWING, WE SAY THAT
18 THE CURRENT -- THE CURRENT IMPORTANCE OF EVEN
19 LICENSES THAT HAVE BEEN ENTERED TWO OR FOUR YEARS
20 AGO WOULD STILL BE RELEVANT IN A NEGOTIATION TAKING
21 PLACE TODAY.

22 SO IT IS NOT OUR INTENTION TO SEAL IN
23 TOTO ALL OF THE INFORMATION REFLECTED ON THE
24 SUMMARY CHART.

25 WE MERELY WANT TO GET THE COURT'S

1 GUIDANCE AS TO WHETHER OR NOT IT'S SUFFICIENT FOR
2 US TO MAKE OUR SHOWING TO SAY THAT THE VALUE
3 ATTRIBUTED TO -- THE TRADE SECRET VALUE OF A
4 PARTICULAR LICENSE AGREEMENT, INDEPENDENT OF THE
5 DATE OF EXPIRATION, STILL MAINTAINS ITS VITALITY IN
6 A CURRENT NEGOTIATION, BECAUSE IT WILL TELL THE
7 COUNTERPARTY WHAT WE HAVE DONE IN THE PAST.

8 THE COURT: SO IS -- THIS IS STILL THE
9 EXPIRED LICENSE ISSUE, AND YOU WANT AN ADVISORY
10 OPINION ON WHETHER THE SHOWING YOU'VE MADE SO FAR
11 IS SUFFICIENT TO SEAL THE EXPIRED LICENSE'S TERMS?

12 MR. SCHWARZ: YOU HAD INDICATED TO THE
13 PARTIES THAT THEY SHOULD, IF THEY FEEL IT IS
14 APPROPRIATE, SUBMIT ADDITIONAL DECLARATIONS.

15 MY POINT TO THE COURT IS THAT WE HAVE
16 DONE SO AND WE HAVE HIGHLIGHTED THE FACT THAT OUR
17 BELIEF THAT THERE IS CURRENT VALUE WITH RESPECT TO
18 LICENSE AGREEMENTS THAT HAVE BEEN ENTERED INTO IN
19 THE PAST, IRRESPECTIVE OF THE DATE OF EXPIRATION.

20 THE COURT: UM-HUM. OKAY.

21 WELL, I'M NOT, AT THIS POINT, PREPARED TO
22 RULE ON WHETHER WHATEVER SHOWING YOU'VE MADE IS
23 SUFFICIENT.

24 MR. SCHWARZ: I UNDERSTAND THAT.

25 MR. LIDDIARD: YOUR HONOR, DYLAN LIDDIARD

1 FOR INTER DIGITAL. IF I MAY SPEAK BRIEFLY WITH
2 RESPECT TO THE SUBMISSION WE MADE?

3 WE BELIEVE WE DID NARROW REDACTIONS OF
4 THE LICENSE AGREEMENTS AND WE'D REQUEST, TO THE
5 EXTENT THAT YOUR HONOR IS INCLINED TO DENY OUR
6 MOTION IN ANY PART, THAT YOU GIVE US LEAVE TO
7 RESUBMIT ADDITIONAL DECLARATIONS AS WELL.

8 FOR EXAMPLE, WE HAVE -- WE WOULD SEEK TO
9 REDACT CERTAIN PROVISIONS IN THE LICENSE AGREEMENT
10 THAT MAY NOT BE PURELY, YOU KNOW, PAYMENT TERMS,
11 BUT WHEN YOU LOOK AT THE TERMS THAT WE'RE SEEKING
12 TO REDACT AS A WHOLE, IT WOULD REFLECT OUR
13 COMPETITIVE NEGOTIATION STRATEGY WITH THE PARTIES.

14 SO WHETHER IT'S PURELY A PAYMENT TERM OR
15 NOT I THINK IS NOT REALLY THE RELEVANT ISSUE.

16 IT'S THAT IF YOU LOOK AT THE TERMS THAT
17 WE'RE SEEKING TO REDACT AS A WHOLE, WOULD THOSE
18 TERMS, IF PUBLICLY DISCLOSED, GIVE ANOTHER PARTY A
19 COMPETITIVE ADVANTAGE IN THE NEGOTIATION WITH INTER
20 DIGITAL?

21 THE COURT: WELL, I THINK MY PREFERENCE
22 WOULD BE THAT IF RIM AND INTER DIGITAL HAVE ANY
23 CONCERN THAT YOU MAY NOT HAVE SAID EVERYTHING YOU
24 WANTED TO SAY IN YOUR SHOWING OF WHY THIS SHOULD BE
25 SEALED, THAT YOU JUST FILE A SUPPLEMENTAL

1 DECLARATION.

2 THAT MIGHT BE THE SAFEST COURSE, AND IT
3 WOULD ALSO HELP US FROM GOING THROUGH MULTIPLE
4 ROUNDS OF THIS. IF YOU HAVE ANY DOUBT, I WOULD SAY
5 FILE A SUPPLEMENTAL.

6 MR. LIDDIARD: YOUR HONOR, I DON'T REALLY
7 HAVE A DOUBT. I THINK WE'VE MET THE STANDARDS THAT
8 ARE REQUIRED.

9 WHAT I'M SAYING IS IN TERMS OF THE
10 GENERAL GUIDANCE THAT YOU PROVIDED WHERE YOU
11 INDICATED YOU MAY ONLY ALLOW PAYMENT TERMS TO BE
12 REDACTED, THE SHOWING THAT WE'VE MADE IS THAT IT'S
13 NOT ONLY THE PAYMENT TERMS, BUT THERE'S OTHER TERMS
14 AND CONDITIONS IN THESE LICENSE AGREEMENTS THAT
15 IF -- AND THEY'RE NOT PUBLICLY DISCLOSED, AND THAT
16 WOULD PUT MY CLIENT AT A COMPETITIVE DISADVANTAGE
17 IN FUTURE NEGOTIATIONS IF THEY WERE TO BE PUBLICLY
18 DISCLOSED IN THIS COURTROOM.

19 THE COURT: ALL RIGHT. WELL, I'LL HAVE
20 TO LOOK AT THAT INDIVIDUAL DECLARATION.

21 MR. LIDDIARD: OKAY. THANK YOU VERY
22 MUCH.

23 MS. GOLINVEAUX: YOUR HONOR, JENNIFER
24 GOLINVEAUX ON BEHALF OF MOTOROLA MOBILITY.

25 I WOULD SAY I THINK OUR DECLARATION AS

1 WELL MEETS THE STANDARD AND WE MADE A SHOWING, BUT
2 IN LIGHT OF YOUR HONOR'S GUIDANCE REGARDING EXPIRED
3 LICENSES, WE'D LIKE TO SEEK LEAVE TO FILE
4 SUPPLEMENTAL DECLARATIONS IF WE FEEL THAT'S
5 NECESSARY.

6 THE COURT: OKAY. THAT'S FINE.

7 SO I HAVE THE TWO PARTIES, INTEL AND
8 MOTOROLA MOBILITY, WHO ARE GOING TO SUPPLEMENT
9 THEIR DECLARATIONS.

10 ANYONE ELSE WANT TO SUPPLEMENT THEIR
11 DECLARATION?

12 MR. MCCAULEY: YOUR HONOR, ROBERT
13 MCCAULEY FOR PHILIPS.

14 THE COURT: YES.

15 MR. MCCAULEY: WE'D LIKE TO EXPLORE THAT
16 POSSIBILITY, ALTHOUGH WE DO BELIEVE WE COVERED THE
17 BASES ORIGINALLY.

18 THE COURT: I'M SURE EVERYONE COVERED THE
19 BASES, BUT IF YOU JUST WANT TO SUPPLEMENT, I'M MORE
20 THAN HAPPY TO TAKE THE INFORMATION NOW AND MAYBE WE
21 CAN RESOLVE IT IN ONE FELL SWOOP.

22 MR. SCOTT: YOUR HONOR, TIM SCOTT FOR
23 IBM. WE'D LIKE TO RESERVE, PLEASE, TO SUPPLEMENT.

24 THE COURT: OKAY.

25 MR. SCHWARZ: AS WELL WITH RIM, YOUR

1 HONOR.

2 THE COURT: I'LL HAVE RIM AND PHILIPS AND
3 IBM AS MAYBES, BUT MOTOROLA, INTEL, APPLE AND
4 SAMSUNG AS DEFINITES FOR SUPPLEMENTATION. CORRECT?

5 MS. GOLINVEAUX: YOUR HONOR, IF YOU COULD
6 PUT MOTOROLA AS A MAYBE, PLEASE?

7 THE COURT: OKAY. THAT'S FINE.

8 ANYONE ELSE WISH TO BE HEARD ON THAT?

9 MS. MAROULIS: YOUR HONOR, WOULD YOU
10 CLARIFY THE TIMING THAT THE COURT WOULD LIKE US TO
11 SUBMIT SUPPLEMENTAL PAPERS? TODAY? TOMORROW?
12 WHEN WOULD BE CONVENIENT?

13 THE COURT: WELL, IF YOU CAN DO IT TODAY,
14 THAT WOULD BE GREAT, BUT I DO UNDERSTAND IT'S 4:00
15 O'CLOCK. WHEN DO YOU WANT TO DO IT?

16 MS. MAROULIS: MONDAY, YOUR HONOR?

17 MR. JACOBS: MONDAY AT 5:00 P.M. YOUR
18 HONOR.

19 THE COURT: THAT'S FINE. IS THAT -- ALL
20 THE THIRD PARTIES ARE SATISFIED WITH THAT DEADLINE?

21 MR. MCCAULEY: YES, YOUR HONOR.

22 MR. SCHWARZ: THANK YOU, YOUR HONOR.

23 THE COURT: OKAY. SO MONDAY AT 5:00 P.M.

24 MR. JACOBS: AND YOUR HONOR, FOR THE
25 AVOIDANCE OF DOUBT, OUR DECLARATIONS WILL ADDRESS

1 THE AREAS THAT ARE, IF YOU WILL, IN PLAY AS TO THE
2 MERITS OF SEALING AS OPPOSED TO THOSE THAT YOU'VE
3 SAID ARE PRESUMPTIVELY SEALED?

4 THE COURT: WELL, NO. I WOULD LIKE TO --
5 I MEAN, I DO NEED TO MAKE A PARTICULARIZED
6 EVALUATION, SO I WOULD MAKE IT COMPLETE.

7 AND I JUST PROVIDED SOME CATEGORIES JUST
8 TO GIVE SOME GUIDANCE SO THERE'S NOT
9 OVERDESIGNATION.

10 I WASN'T HAPPY TO SEE THERE ARE CERTAIN
11 S.E.C. FILING INFORMATION THAT'S BEING REQUESTED TO
12 BE SEALED EVEN IN THIS ROUND, SO THEY'RE CERTAINLY
13 OVERBROAD.

14 MR. JACOBS: I UNDERSTAND, YOUR HONOR.

15 THE COURT: THERE'S NO PRESUMPTION THAT
16 ALL OF THIS WILL BE SEALED BECAUSE IT COULD BE THAT
17 YOU HAVE SOURCE CODE THAT HAS ALREADY BECOME PUBLIC
18 IN SOME WAY, SO I'M NOT GOING TO SEAL EVERYTHING
19 JUST BECAUSE IT FITS INTO THESE CATEGORIES. SO
20 PLEASE MAKE YOUR SHOWING AS TO EVERYTHING.

21 MR. OLSON: YOUR HONOR, WOULD WE HAVE AN
22 OPPORTUNITY TO FILE WHAT I WOULD PRESUME WOULD BE
23 SORT OF ONE CONSOLIDATED RESPONSE TO ALL OF THIS?

24 THE COURT: SURE.

25 MR. OLSON: AND IF SO, WHEN?

1 THE COURT: WHEN WOULD YOU LIKE TO DO IT?

2 MR. OLSON: I THINK I GOT A LITTLE OVERLY
3 PRESUMPTUOUS OF MY OWN ABILITY TO FILE SOMETHING IN
4 SIX HOURS BEFORE, SO IF WE COULD HAVE, SAY, THREE
5 DAYS TO RESPOND TO THAT, SAY ON THURSDAY?

6 THE COURT: THAT'S FINE. SO I BELIEVE
7 THAT'S AUGUST 2ND. SO AUGUST 2ND, REUTERS WILL
8 RESPOND.

9 ALL RIGHT. LET'S HANDLE THE ADVERSE
10 INFERENCE JURY INSTRUCTIONS.

11 SAMSUNG HAS FILED A MOTION FOR RELIEF
12 FROM JUDGE GREWAL'S ORDER.

13 WHEN WOULD APPLE LIKE TO FILE A RESPONSE?

14 MR. MCELHINNY: TUESDAY, YOUR HONOR.

15 THE COURT: OKAY. SO THAT'S GOING TO BE
16 JULY THE 31ST.

17 OKAY. WITH REGARD TO --

18 MR. PRICE: YOUR HONOR, ON BEHALF OF
19 SAMSUNG, MAY WE HAVE THE OPPORTUNITY TO FILE A
20 REPLY BRIEF ON FRIDAY, NEXT FRIDAY?

21 MR. MCELHINNY: THERE'S AN UNDERLYING
22 ISSUE HERE, YOUR HONOR, AND I WANT TO MAKE SURE
23 THAT YOUR HONOR IS AWARE OF IT.

24 IF WE CAN HAVE A MINUTE OF YOUR TIME, I
25 WANT TO RAISE SOME QUESTIONS ABOUT THE OPENING.

EXHIBIT 4

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11
 12 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16
 17 APPLE INC., a California corporation,

18 Plaintiff,

19 v.

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

23 Defendants.

Case No. 11-cv-01846-LHK (PSG)

**APPLE'S MOTION TO SEAL
 CONFIDENTIAL TRIAL EXHIBITS**

1 Apple files this motion to seal confidential trial exhibits in whole or in part pursuant to the
2 Court's instructions at the July 27 hearing.¹ Mindful of the Court's desire to have the parties
3 clearly identify which sealing issues concern the trial and which concern documents filed with
4 previous motions, Apple is filing two separate motions. This motion addresses documents
5 contained on the parties' trial exhibit lists. Concurrently with this motion, Apple is separately
6 filing a motion addressing previously filed documents and motions only.

7 Apple seeks sealing here of a select group of documents that contain the only its most
8 competitively sensitive information. All of the trial exhibits subject to this Motion meet the
9 "compelling reasons" standard for sealing. These exhibits contain confidential trade secret
10 information, disclosure of which would severely harm Apple's competitive position and in some
11 cases damage third parties. Specifically, these exhibits comprise (a) financial data concerning
12 Apple's manufacturing capacity, costs, prices, product-specific revenues, unit sales, profits, and
13 profit margins; (b) confidential source code and technical information; (c) information relating to
14 Apple's licensing strategies, including licensing terms relating to compensation, duration, and
15 scope; and (d) proprietary market research, including customer surveys conducted by Apple.
16 Apple also seeks to seal proprietary market research received from third party IDC pursuant to a
17 confidentiality agreement, the disclosure of which would harm IDC's livelihood.

18 Apple has submitted declarations from Jim Bean, Apple's Vice-President of Financial
19 Planning and Analysis, Henri Lamiroux, Vice President of iOS Apps & Frameworks, Beth
20 Kellerman, Apple's Litigation eDiscovery Manager, and Greg Joswiak, a Vice-President in
21 Apple's Product Marketing department, in support of its motion to seal. These declarations
22 individually address each document Apple is seeking to seal, describe the measures the company
23 has used to maintain its confidentiality, and the competitive harm disclosure of the information
24 would create.

25 ¹ On July 27th, Apple and Samsung filed a Joint Motion Regarding Sealing of Trial
26 Exhibits. The Court has not yet ruled on this motion, and Apple urges that the Joint Motion be
27 granted. However, in accordance with the Court's instruction to specify the trial exhibits at issue,
28 Apple also files this Motion to Seal Trial Exhibits to preserve its arguments relating to the
individual exhibits as to which it believes that sealing is appropriate.

1 **I. LEGAL STANDARD**

2 Two different standards apply on motions to seal. The first standard is “good cause.”
3 This standard is normally applied to non-dispositive motions “because those documents are often
4 ‘unrelated, or only tangentially related, to the underlying cause of action.’” *Kamakana v. City*
5 *and Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citation omitted). In *Kamakana*, the
6 Ninth Circuit held that “[a] ‘good cause’ showing under Rule 26(c) will suffice to keep sealed
7 records attached to non-dispositive motions.” *Id.* at 1180 (citation omitted). *Accord Pintos v.*
8 *Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (“good cause” standard is not limited to
9 discovery motions, but applies to all non-dispositive motions).

10 The Court has “‘broad latitude’ under Rule 26(c) ‘to prevent disclosure of materials for
11 many types of information, including, but not limited to, trade secrets or other confidential
12 research, development, or commercial information.’” *Reilly v. Medianews Grp., Inc.*, No. C 06-
13 4332, 2007 U.S. Dist. LEXIS 8139, at *13 (N.D. Cal. Jan. 24, 2007) (quoting *Phillips v. Gen.*
14 *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). *See* Fed R. Civ. Pr. 26(c).

15 Courts regularly grant motions to seal under Rule 26(c) when a party has made a
16 particularized showing that competitive harm may potentially result from the disclosure of
17 confidential financial information. For example, in *Reilly*, the court denied an intervenor’s
18 motion to unseal seventeen of nineteen documents because they contained “detailed financial
19 information, including past and present revenues and projections of future revenues.” 2007 U.S.
20 Dist. LEXIS 8139, at *11-13; *see also Bean v. Pearson Educ., Inc.*, 11-8030, 2012 U.S. Dist.
21 LEXIS 99540, at *5-6 (D. Ariz. July 16, 2012) (granting motion to seal non-public financial sales
22 and distribution information because it revealed defendants “market research” and “profit and
23 sales margins”).

24 The standard is higher for dispositive pleadings because “the resolution of a dispute on the
25 merits, whether by trial or summary judgment, is at the heart of the interest in ensuring the
26 ‘public’s understanding of the judicial process and of significant public events.’” *Kamakana*, 447
27 F.3d at 1179 (citation omitted). For dispositive motions, there is “a strong presumption in favor
28 of [public] access.” *Id.* at 1178 (citation omitted). However, the right of access is not absolute.

1 A party can overcome the presumption by meeting the “compelling reasons” standard. *Id.* “In
2 general, ‘compelling reasons sufficient to outweigh the public’s interest in disclosure and justify
3 sealing court records exist when such ‘court files might have become a vehicle for improper
4 purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate
5 libelous statements or release trade secrets.” *Id.* at 1179 (quoting *Nixon v. Warner Commc’ns,*
6 *Inc.*, 435 U.S. 589, 598 (1978)).

7 It is well established in particular that information containing trade secrets should be
8 sealed: “The publication of materials that could result in an infringement upon trade secrets has
9 long been considered a factor that would overcome this strong presumption.” *Apple Inc. v.*
10 *Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) (remanding case because lower court failed to
11 articulate reasons for its sealing decision).

12 Reuters suggested at the July 27 hearing that financial information has a sort of second-
13 class trade secret status. (*See* July 27 Hr’g Tr. at 12 (“Financial information just simply isn’t a
14 sealable trade secret of the same ilk as the secret formula of code or source code.”).) It isn’t true.
15 The majority of trade secret cases in federal and state court in California concern non-technical
16 information, most typically confidential financial or business information.

17 In *In re Electronic Arts, Inc.*, for example, the Ninth Circuit held that licensing pricing
18 terms, royalty rates, and payment terms all constitute information that “plainly falls within the
19 definition of ‘trade secrets.’” 298 Fed. App’x 568, 569 (9th Cir. 2008). The Court found these
20 license terms should be sealed, and noted that, “[i]n *Nixon*, the U.S. Supreme Court established
21 that the ‘right to inspect and copy judicial records is not absolute,’ and, in particular, ‘the
22 common-law right of inspection has bowed before the power of a court to insure that its records
23 are not used . . . as sources of business information that might harm a litigant’s competitive
24 standing.” *Id.* at 569 (quoting *Nixon*, 435 U.S. at 598). *Electronic Arts* also relied for its holding
25 on *Whyte v. Schlage Lock Co.*, a leading California trade secret case which recognized the trade
26 secret status of a wide variety of types of financial information including documents disclosing
27 “profit margin” and “costs of production,” as well as “confidential marketing research.” 101 Cal.
28 App. 4th 1443, 1455–56 (2002).

1 California's Uniform Trade Secrets Act defines the term "trade secret" broadly.

2 Specifically, it provides:

3 "Trade secret" means information, including a formula, pattern, compilation,
4 program, device, method, technique, or process, that: (1) Derives independent
5 economic value, actual or potential, from not being generally known to the public
6 or to other persons who can obtain economic value from its disclosure or use; and
7 (2) Is the subject of efforts that are reasonable under the circumstances to
8 maintain its secrecy.

9 Cal. Civ. Code § 3426.1(d).

10 It is beyond dispute that financial information and other confidential business information
11 that meets this test constitute trade secrets. *See, e.g., Whyte*, 101 Cal. App 4th 1443 at 1455-56;
12 *O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, 399 F. Supp. 2d 1064, 1075 (N.D. Cal. 2005)
13 (upholding jury verdict for misappropriation of trade secrets including cost information contained
14 in data sheets); *First Advantage Background Servs. Corp. v. Private Eyes, Inc.*, 569 F. Supp. 2d
15 929, 935-36 (N.D. Cal. 2008) (finding allegations that defendant improperly disclosed plaintiff's
16 confidential information "including profit margins" stated trade secret claim). *See also Courtesy*
17 *Temp. Serv. v. Camacho*, 222 Cal. App. 3d 1278, 1288 (1990) (billing rates and markup rates
18 "irrefutably" of commercial value and qualify for trade secret protection). *See also Electronic*
19 *Arts*, 298 Fed. App'x at 569 (relying on similar Restatement definition of trade secret providing
20 that "'trade secret may consist of any formula, pattern, device or compilation which is used in
21 one's business, and which gives him an opportunity to obtain an advantage over competitors who
22 do not know or use it'") (quoting *Restatement of Torts* § 757 cmt. B).

23 As a result, just as the Ninth Circuit itself did in *Electronic Arts*, courts in this Circuit
24 routinely hold that confidential business and financial information that qualifies as a trade secret
25 should be sealed under the *Kamakana* test. For example, in *AMC Tech., LLC v. Cisco Sys.*,
26 Magistrate Grewal held that amount of fees and royalties paid for development and licensing of
27 software should be sealed because disclosure would allow customers to determine Cisco's profit
28 margins and "might be used for an improper purpose, including disclosure of Cisco's trade secrets."
No. 5:11-cv-3403, 2012 U.S. Dist. LEXIS 9934 (N.D. Cal. Jan. 27, 2012).

1 Similarly, in *TriQuint Semiconductor v. Avago Techs. Ltd.*, the court granted a motion to
2 seal confidential financial information including market analysis information, cost information,
3 capacity information and profit margins for specific products. No. CV 09-1531, 2011 U.S. Dist.
4 LEXIS 143942 at *10, 11, 21 (D. Ariz. Dec. 12, 2011). *See also Bauer Bros., LLC v. Nike, Inc.*,
5 09cv500, 2012 U.S. Dist LEXIS 72862 (S.D. Cal. May 24, 2012) (sealing financial information
6 including cost of goods sold for each product and confidential sales and marketing information);
7 *Powertech Tech., Inc., v. Tessera, Inc.*, No. C11-3121, 2012 U.S. Dist. LEXIS 75831, at *5 (N.D.
8 Cal. May 31, 2012) (granting motion to seal details of license agreement); *Network Appliance,*
9 *Inc. v. Sun Microsystems*, No. C-07-6053, 2012 U.S. Dist. LEXIS 21721, at *7 (N.D. Cal. Mar.
10 10, 2010) (sealing material that would subject third parties to competitive harm).

11 The license agreement that the Ninth Circuit ordered sealed in *Electronic Arts* was a trial
12 exhibit. 298 Fed. Appx. t 569. Apple agrees that, for evidence presented at trial that goes to the
13 merits of the issues at trial, the “compelling reasons” standard applies on a motion to seal, for the
14 reasons articulated in *Kamakana*. Sealing is appropriate because all the documents Apple seeks
15 to seal here meet that standard.

16 In some cases, however, material will be contained in documents that may be presented
17 into evidence by Samsung at trial that is not relevant to the merits at all. Specifically, Samsung
18 has included many documents on its exhibit list that consist of voluminous highly confidential
19 marketing research reports or financial reports when all it seeks to use from the document is a
20 page or two out of a hundred. The information contained in these documents is extremely
21 sensitive, but the vast majority of it has absolutely nothing to do with this case. The marketing
22 research reports, for example, contain data relating to surveys and analysis of Apple iPad and
23 iPhone buyers outside the United States and on issues that neither party contends are relevant.
24 Thus far, Apple has tried unsuccessfully to negotiate with Samsung to include only excerpts from
25 those documents on its exhibit list. The information contained in these documents that does not
26 relate to the merits of this action should be sealed under the “good cause” standard because,
27 similar to the reasoning expressed in *Kamakana* with respect to documents attached to a non-

1 dispositive motion, this information is ‘unrelated, or only tangentially related, to the underlying
2 cause of action.’” *Kamakana*, 447 F.3d at 1179.

3 In *Richardson v. Mylan Inc.*, for example, the Court granted a motion to redact the trial
4 record to seal part of the testimony of two witnesses who testified at a jury trial. Case No. 09-
5 CV-1041-JM (WVG), 2011 U.S. Dist. LEXIS 23969, at *6-8 (S.D. Cal. Mar. 9, 2011). The
6 Court cited to *Kamakana*, and held that, “In order to prevail on a motion to seal portions of the
7 trial transcripts, Defendants must demonstrate that their interest in concealing the information
8 therein outweigh the public’s interest in accessing it.” *Id.* at *6. The Court found the defendants
9 met that standard because the information was “commercially sensitive” but was of
10 “comparatively little value to the public in terms of enhancing its ‘understanding [of] the judicial
11 process’” because Defendants sought to seal a small portion of the overall transcript and the
12 portions “do not include any information vital to understanding the nature of the underlying
13 proceedings.” *Id.* at *7 (citation omitted). The court emphasized that “courts have repeatedly
14 mentioned trade secrets as an archetypal category of information for which sealing of court
15 records is justified.” *Id.* at *8.

16 Regardless of which standard the Court applies, it should take into account the fact that
17 information contained in such documents is unrelated to the merits of the action in determining
18 whether to seal it. *See Network Appliance, Inc. v. Sun Microsystems, Inc.*, Case No. C-0706053
19 (EDL), 2010 U.S. Dist. LEXIS 21721 at *13-14 (N.D. Cal. Mar. 10, 2010) (sealing, under
20 compelling interest standard, material that would “do little to aid the public’s understanding of the
21 judicial process, but have the potential to cause significant harm” to one of the parties). The
22 material Apple seeks to seal does not go to the core issues of the case, but is highly specific,
23 going well beyond what would aid the public in understanding the parties’ positions and the
24 judicial process.

II. THE COURT SHOULD GRANT APPLE'S NARROW REQUESTS TO SEAL

A. The Court Should Seal Trial Exhibits Containing Apple's Confidential Financial Information

Apple seeks to seal the following trial exhibits in whole or part because they contain sensitive financial information, the disclosure of which would cause Apple competitive harm: PX 25, PX 67, PX 78, PX 102, PX 103, PX 181, DX 541, DX 542, DX 543, DX 544, DX 755, DX 756, and DX 777–DX 780.

These trial exhibits contain highly confidential financial information concerning Apple's manufacturing capacity, product-specific profits and profit margins, product-specific unit sales and revenue, and costs. Courts recognize that, provided appropriate efforts have been made to maintain their confidentiality, these types of information constitute trade secrets, and a compelling need exists for maintaining their confidentiality. *AMC Tech., LLC v. Cisco Sys.*, 2012 U.S. Dist. LEXIS 9934 (Jan. 27, 2012); *TriQuint Semiconductor v. Avago Techs. Ltd.*, 2011 U.S. Dist. LEXIS 143942 at *10, 11, 21 (D. Ariz. Dec. 12, 2011) (sealing confidential financial information including market analysis information, cost information, capacity information and profit margins for specific products).

Apple's financial information meets the definition of a trade secret under California's UTSA. Apple has submitted a declaration in support of this motion from Jim Bean, its Vice President of Worldwide Financial Planning and Analysis. The declaration explains, for each portion of each document that Apple seeks to have sealed, why Apple keeps it confidential and the steps Apple takes to do so. (Declaration of J. Bean, *passim*.) Each of these data are competitively sensitive and derive value from the fact that they are not shared with the general public or with others who could derive economic benefit from this data – Apple's competitors and suppliers. (Bean Decl. at 3–8.) If disclosed, Apple's competitors could use these data for “improper purposes.” *Kamakura*, 447 F.3d at 1179.

Here, “compelling reasons” exist for sealing of these trial exhibits. Information concerning Apple's manufacturing capacity information is potentially valuable to Apple's competitors because they could use such information to increase production or decrease prices at

1 times when Apple would be most vulnerable to such actions. (Bean Decl. at ¶¶ 6–7.) Capacity
2 information is also potentially valuable to Apple’s suppliers, who could raise prices when Apple
3 is most likely to increase capacity. (*Id.* at ¶ 6.) The court recognized at the July 27 hearing that
4 capacity information could qualify for sealing if properly protected. (July 27 Hr’g Transcript at
5 9). Apple’s manufacturing capacity data are disclosed in PX 25.

6 Information concerning Apple’s costs, profits, profit margins, and product-specific unit
7 sales and revenue is also valuable to its competitors and suppliers. Although Apple considers
8 margin data to be sensitive even when they are aggregated over a long period of time for broad
9 product categories, such data are far more commercially valuable – and competitively sensitive –
10 if they relate to specific products or to discrete periods of time. (Bean Decl. at ¶¶ 5, 8.) Apple’s
11 competitors could use profits, costs, and margins data for specific products to undercut Apple’s
12 prices by determining the products for which Apple has substantial profits, low costs, and wide
13 margins and thus would be most susceptible to a price cut. (*Id.* at ¶ 8.) Apple’s suppliers could
14 use quarterly profits, costs, and margins data to determine when Apple has the lowest margins
15 and is thus more vulnerable to a cost increase. (*Id.* at ¶ 8.) Apple’s costs, profits, profit margins,
16 and product-specific unit sales and revenue data are disclosed in Trial Exhibits PX 25, PX 67,
17 PX 78, PX 102, PX 103, PX 181, DX 542, DX 755, DX 543, DX 756, DX 541, DX 544, DX 777,
18 and DX 778–780.

19 Because of these significant risks of disclosure, Apple goes through extraordinary
20 measures to maintain the financial information discussed above. Apple marks its financial
21 documents “confidential.” (Bean Decl. at ¶ 3.) Within Apple, access is restricted to only those
22 employees who “need-to-know.” (*Id.*) To gain access, employees must be approved by one of
23 two VP-level officers, one of whom is Mr. Bean, Apple’s Vice President of Worldwide Financial
24 Planning and Analysis. (*Id.*) In addition, for costs, margin, and product-specific profit and loss
25 data such as those found in Exhibits PX 103, DX 541, DX 544, DX 777, which are among the
26 most sensitive information Apple maintains, Apple restricts disclosure to its executive team and
27 board of directors. (*Id.* at ¶ 4.)
28

1 Apple also makes extraordinary efforts to prevent disclosure of costs information – found
2 in Exhibits PX 25, Exhibits PX 103, PX 181, DX 541, DX 544, DX 777, DX 779, and DX 780 –
3 to third parties. Apple obscures its component costs from its OEM partners by buying its own
4 components from other suppliers itself, rather than having the OEMs purchase the components
5 from other companies directly. (*Id.* at ¶ 4.)

6 The financial data found in Exhibits PX 25, PX 67, PX 78, PX 102, PX 103, PX 181,
7 DX 541, DX 542, DX 543, DX 544, DX 755, DX 756, and DX 777–DX 780 are therefore trade
8 secrets of Apple. *Whyte*, 101 Cal. App 4th at 1455-56; *O2 Micro Int'l Ltd.*, 399 F. Supp. 2d at
9 1075; *First Advantage Background Servs. Corp.*, 569 F. Supp. 2d at 935-36. As such, Apple's
10 interest in limiting disclosure outweighs the public's right of access. *Bauer Bros., LLC v. Nike,*
11 *Inc.*, 09cv500, 2012 U.S. Dist LEXIS 72862 (S.D. Cal. May 24, 2012) (finding compelling reason
12 to seal cost of goods sold for each product and confidential sales and marketing information);
13 *TriQuint Semiconductor*, 2011 U.S. Dist. LEXIS 143942 at *10, 11, 21 (finding compelling
14 reason to seal cost information and profit margins for specific products).

15 **B. The Court Should Seal Apple's Confidential Source Code**

16 Apple trial exhibits PX 63 and 121 and Samsung trial exhibit DX 645 contain highly
17 confidential non-public Apple source code should be sealed. Apple trial exhibit PX 110 contains
18 detailed schematics of the Apple iBook and Apple iSight. As discussed in detail above, it is well
19 established that information containing trade secrets should be sealed, and Apple's source code is
20 clearly the type of information that qualifies as a trade secret. *See Agency Solutions.Com, LLC v.*
21 *TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011) (summarizing California
22 Trade Secret law and stating that "source code is undoubtedly a trade secret").

23 Apple's declarations from its employees, Henri Lamiroux, its Vice President of iOS Apps
24 & Frameworks, and Beth Kellerman, a Litigation eDiscovery Manager establish "compelling
25 reasons" for sealing these files. *See Kamakana*, 447 F.3d at 1179; *In re Elec. Arts, Inc.*, 298 Fed.
26 Appx. at 569. It is indisputable that Apple derives independent economic value from its source
27 code, including its core iOS source code, and through the sale of devices that execute that code.
28 These declarations explain which source code files Apple seeks to have sealed, the importance of

1 the source code, and the extraordinary lengths Apple goes to in order to maintain the secrecy and
2 security of its source code. (*See* Lamiraux Decl. at ¶¶ 4-9; Kellerman Decl. at ¶¶ 5-8.) The
3 security measures surrounding Apple’s iOS code include, but are not limited to, restricting access
4 to the code on a need-to-know basis, avoiding outside dissemination of the source code and
5 maintaining physical security over the code. (*See id.*)

6 Apple goes to great lengths to maintain the security and secrecy of its source code because
7 disclosure of its source code to the general public including Apple’s competitors would cause
8 Apple significant competitive harm. Apple has expended considerable time and money
9 developing its iOS source code. If publicly available portions of this code were subject to
10 disclosure and copying, it would amount to a transfer of Apple’s investment in developing the
11 iOS source code from it to a competitor, providing an unfair competitive advantage. (*See*
12 Lamiraux Decl. at ¶¶ 6-9.) Apple’s detailed schematics of the Apple iBook and iSight are trade
13 secrets that should be sealed for the same reasons. (*See* Kellerman Decl. at ¶12).

14 In light of the nature of the source code as trade secrets of Apple, Apple’s interest in
15 limiting disclosure outweighs the public’s right of access. *See Abstrax, Inc. v. Sun Microsystems,*
16 *Inc.*, No. CV 09-5243-PJH, 2011 U.S. Dist. LEXIS 68596 at *8 (N.D. Cal. June 27, 2011) (“The
17 Court finds that those portions of Abstrax’s filings that include Sun’s confidential information
18 regarding revenue, products, internal manufacturing procedures, source code development, and
19 related deposition testimony meet the compelling reasons standard and out-weigh disclosure”).
20 The Court should therefore grant Apple’s motion and seal the source code trial exhibits, PX 63,
21 and 121 and DX 645 and Apple’s detailed electrical schematics, PX 110.

22 C. The Court Should Seal Confidential and Proprietary Market Research 23 Reports

24 1. Compelling reasons exists for sealing Apple confidential buyer surveys

25 Apple seeks sealing of DX 534, DX 614, DX 617, and DX 766–DX 776, which are Apple
26 iPhone “Buyer Surveys” and iPad “Tracking Studies,” confidential market research surveys that
27 Apple conducts in order to gain insight into its customers’ purchasing decisions and preferences
28 (Joswiak Decl. at ¶¶ 3–4, 8, 10), and DX 701, which amalgamates several Apple Buyer Surveys.

1 Exhibits DX 614, DX 772, DX 773, DX 774, DX 775, DX 534, DX 776, and DX 767 are
2 quarterly iPhone Buyer Surveys created by Apple in fiscal years 2010 and 2011. (*Id.* at ¶ 8.)
3 Apple generated these documents by conducting monthly surveys of purchasers of its iPhone
4 products and compiling them each quarter. (*Id.* at ¶ 3.) Each quarterly survey follows a similar
5 format and reports the same type of information for iPhone buyers from surveys conducted during
6 the applicable quarter. (*Id.* at ¶ 8.) These Buyer Surveys would be of significant value to Apple’s
7 competitors, who lack access to Apple’s customer base, and thus cannot replicate the thorough
8 analysis contained in the Buyer Surveys, learn the preferences and profiles of Apple’s customers,
9 or observe trends over time. (*Id.* at ¶ 5.) Moreover, the conclusions that Apple has drawn from
10 this data are equally valuable – Apple’s competitors could use access to its analysis of its
11 customers’ preferences to gain insight into Apple’s future product plans and marketing strategies.
12 (*Id.* at ¶ 6.)

13 Exhibits DX 768, DX 769, DX 617, DX 770, DX 771, and DX 766 are iPad Tracking
14 Studies created in fiscal years 2010 and 2011. (*Id.* at ¶ 10.) Similar to the iPhone Buyer Surveys,
15 Apple conducts monthly surveys of purchasers of its iPad products and compiles them each
16 quarter. (*Id.* at ¶ 4.) As with the iPhone Buyer Surveys, disclosure of the iPad Tracking Studies
17 would severely harm Apple by giving its competitors insight into the reasons why Apple’s
18 customers purchase iPads, customers’ usage habits, buying preferences, and demographics, and
19 the conclusions that Apple has drawn from this information. (*Id.* at ¶ 11.)

20 Finally, disclosure of Exhibit DX 701, which amalgamates numerous Buyer Surveys,
21 would harm Apple just as severely as would disclosure of the individual Buyer Surveys and
22 Tracking Studies. The information contained in DX 701 can only be obtained from Apple’s
23 customer base and thus cannot be replicated by Apple’s competitors. (*Id.* at ¶ 13.) Moreover, it
24 contains precisely the kinds of trend data that would give Apple’s competitors insight into
25 Apple’s strategic moves. (*Id.*)

26 Because of the value of the Buyer Surveys and Tracker Studies, Apple employs strict
27 measures to protect them from disclosure. Apple stamps the documents confidential on a “need
28 to know” basis. (*Id.* at ¶ 7.) Apple circulates the buyer surveys only to a small, select group of

1 executives. (*Id.*) Apple's Vice President of Worldwide iPod, iPhone and iOS Product Marketing,
2 Greg Joswiak, personally restricts the dissemination of these marketing research surveys outside
3 of this group of executives, routinely denies access, and only rarely approves further distribution
4 and even then only if restricted to a survey-question-by-survey-question basis. (*Id.*)

5 Courts have found that compelling reasons exist for sealing market analysis information
6 like that found in the Buyer Surveys and Tracker Studies. *TriQuint Semiconductor*, 2011 U.S.
7 Dist. LEXIS 143942 at *10, 11, 21 (finding compelling reasons to seal market analysis); *Bauer*
8 *Bros., LLC*, 2012 U.S. Dist LEXIS 72862, at *6 (finding compelling reasons to seal confidential
9 sales and marketing information). Apple's efforts to preserve their confidentiality, and the harm
10 that Apple would suffer if this previously unknown information was disclosed qualifies these
11 documents for trade secret protection and justifies sealing them. Accordingly, the Court should
12 grant Apple's request to seal Trial Exhibits DX 534, DX 614, DX 617, 701, and DX 766–
13 DX 776.

14 15 **2. Compelling reasons support sealing information derived from 16 confidential third-party market research reports**

17 In addition, Apple seeks to seal Exhibits 536 and 537, which are copies of full market
18 research report by nonparty IDC and a full spreadsheet containing data underlying that report,
19 respectively. IDC is a market analysis firm that produces research reports that it sells subject to
20 nondisclosure agreements. Courts have sealed market analysis information of the type found in
21 these exhibits. *TriQuint Semiconductor v. Avago Techs. Ltd.*, 2011 U.S. Dist. LEXIS 143942 at
22 *10, 11, 21 (D. Ariz. Dec. 12, 2011) (granting motion to seal market analysis information).

23 Compelling reasons for sealing Exhibits DX 536 and DX 537 exist. Widespread
24 dissemination of these IDC publications would impair its ability to sell the reports from which
25 those datasheets were taken, thus causing it severe commercial harm. (Sabri Decl. at ¶ 4 (Dkt.
26 No. 1408-2.) Because of the risk of widespread disclosure, IDC requires purchasers of its
27 research reports agree not to disclose them to third parties. (*Id.* at ¶ 3.) The Court has recognized
28

1 the propriety of sealing such information if an appropriate showing is made. (*See* July 27 Hr'g
2 Tr. at 9-10.)

3 The public interest in access to Exhibits DX 536 and DX 537 is low. As Apple has
4 explained to the Court, limited data provided by IDC concerning Apple's and Samsung's market
5 shares will be filed on the public record. The full report and spreadsheet, however, are largely
6 irrelevant to the issues to be decided in this litigation.

7 Because the risk of commercial harm to IDC is severe and the public interest in access is
8 low, the Court should grant sealing of portions of Exhibits DX 536 and DX 537 as Apple has
9 requested.

10 **D. The Court Should Seal Confidential Information Concerning Apple's**
11 **Licenses**

12 The Ninth Circuit has held that non-public information contained in patent licenses is the
13 type of information "that plainly falls within the definition of 'trade secrets.'" *In re Electronic*
14 *Arts, Inc.*, 298 Fed.Appx. at 569 (reversing denial of request to seal licensing terms such as
15 royalty rates and payment terms under "compelling reasons" test because they constitute trade
16 secret information whose loss might harm a party's competitive standing); *see also TriQuint*
17 *Semiconductor, Inc. v. Avago Techs., Ltd.*, Case No. CV 09-1531-PHX-JAT, 2011 WL 6182346,
18 at *2-*4 (D. Ariz. Dec. 13, 2011) (redacting irrelevant financial information, including pricing
19 information, under compelling reason standard because disclosure "would harm TriQuint's
20 bargaining position and would give competitors the ability to directly under TriQuint and unfairly
21 win business."). Accordingly, patent licenses and documents reflecting or summarizing those
22 licenses, such as summaries created pursuant to Fed. R. of Evid. 1006 or internal royalty tracking
23 charts, should be treated as confidential trade secrets and protected from public disclosure.

24 Apple seeks to seal portions of the following trial exhibits that contain non-public, trade
25 secret information regarding Apple's licensing and acquisition efforts: DX 630.007-009; DX 757,
26 DX 758, PX 76, PX 78, and DX 593.

27 This licensing-related information is commercially valuable and has been kept
28 confidential, and thus qualifies for trade secret protection. *Electronic Arts, Inc.*, 298 Fed. Appx.

1 at 569; *Whyte*, 101 Cal. App 4th 1443 at 1455-56; *O2 Micro Int'l Ltd.*, 399 F. Supp. 2d at 1075.
2 It is commercially valuable because disclosure would harm Apple's competitive standing, as well
3 as the competitive standing of the other parties to the licensing agreements at issue. (Bean Decl.
4 at ¶ 9.) In particular, if terms of licenses to patents not subject to any FRAND obligation were
5 disclosed—such as, amounts paid, royalty rates, and duration—potential licensees and licensors
6 could use this information to gain an unfair negotiating advantage over Apple and the companies
7 involved in the license agreements. (*Id.*) Disclosure of the terms of these Apple license
8 agreements would reveal what Apple did in the past, and could permanently damage Apple's
9 negotiations in the future as third parties would expect similar terms, basing their expectations on
10 heavily negotiated agreements that were meant to be confidential. (*Id.*)

11 Further, Apple has kept the terms of these licensing agreements confidential. The licenses
12 contain non-disclosure provisions and Apple has honored these provisions and has not disclosed
13 the confidential information in these licenses publicly. (*Id.*) Even within Apple, very few
14 employees have access to these agreements, and they are maintained in a highly secure manner to
15 prevent any inadvertent disclosure. (*Id.*)

16 The public interest in gaining access to Apple's trade secret information regarding its
17 patent licenses is limited. *MMI, Inc. v. Baja, Inc.*, 743 F. Supp. 2d 1101, 1106 (D. Ariz. 2010)
18 (moving party demonstrated good cause to seal licensing agreement in patent infringement case in
19 part since “public has a diminished need for th[e] document because it is ‘only tangentially
20 related to the underlying cause of action.’” (quoting *Kamakana*, 447 F.3d at 1179)).

21 Because disclosure of licensing and acquisition information would harm Apple's and third
22 parties' competitive positions and the public interest in disclosure is limited, a compelling need to
23 seal exists. *Electronic Arts*, 298 Fed. Appx. at 569; see also *Powertech Tec., Inc., v. Tessera,*
24 *Inc.*, 2012 U.S. Dist. LEXIS 75831, at *5 (N.D. Cal. May 31, 2012) (granting motion to seal
25 details of license agreement).

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III. CONCLUSION

For the foregoing reasons, Apple respectfully requests that the Court grant Apple’s Motion and seal the following documents: PX25, PX63, PX67, PX76, PX78, PX102, PX103, PX110, PX121, PX181, PX182, DX534, DX536, DX537, DX541, DX542, DX543, DX544, DX581, DX587, DX589, DX593, DX614, DX617, DX630, DX645, DX701, DX755, DX756, DX757, DX758, DX766-776, DX777, DX778, DX779, DX780.

Dated: July 30, 2012

MORRISON & FOERSTER LLP

By: /s/ Michael A. Jacobs
MICHAEL A. JACOBS

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EXHIBIT 5

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11
 12 Attorneys for Plaintiff and
 Counterclaim-Defendant APPLE INC.

13
 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 APPLE INC., a California corporation,

18 Plaintiff,

19 v.

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

23 Defendants.
 24

Case No. 11-cv-01846-LHK (PSG)

**APPLE’S MOTION TO SEAL PRIOR
 MOTIONS AND EXHIBITS
 THERETO**

1 Apple files this further revised motion to seal pursuant to the Court's instructions at the
2 July 27 hearing.

3 Mindful of the Court's admonitions, Apple here seeks sealing of limited portions of fewer
4 than thirty documents. Many of these documents were attached to non-dispositive motions, and
5 as such warrant sealing if they meet the "good cause" standard of Federal Rule of Civil Procedure
6 26(c). However, all of Apple's documents meet the "compelling reasons" standard because the
7 portions Apple seeks to seal contain confidential trade secret information, disclosure of which
8 would severely harm Apple's competitive position and in some cases damage third parties.
9 Specifically, these excerpts comprise (a) financial data concerning Apple's manufacturing
10 capacity, costs, prices, product-specific revenues, unit sales, profits, and profit margins;
11 (b) information relating to Apple's licensing and acquisition strategies, including licensing terms
12 relating to compensation, duration, and scope; and (c) Apple's proprietary market research.
13 Apple also seeks to seal proprietary market research received from third party IDC pursuant to a
14 confidentiality agreement, the disclosure of which would harm IDC's livelihood.

15 Apple has submitted declarations from Jim Bean, Apple's Vice-President of Financial
16 Planning and Analysis, and Greg Joswiak, a Vice-President in Apple's Product Marketing
17 department, in support of its motion to seal. These declarations individually address each
18 document Apple is seeking to seal, describe the measures the company has used to maintain its
19 confidentiality and the competitive harm disclosure of the information would create.

20 I. LEGAL STANDARD

21 Two different standards apply on motions to seal. For non-dispositive motions, the
22 standard is "good cause." *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th
23 Cir. 2006). In *Kamakana*, the Ninth Circuit held that "[a] 'good cause' showing under Rule 26(c)
24 will suffice to keep sealed records attached to non-dispositive motions." *Id.* at 1180 (citation
25 omitted). *Accord Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) ("good
26 cause" standard is not limited to discovery motions, but applies to all non-dispositive motions).

27 The Court has "'broad latitude' under Rule 26(c) 'to prevent disclosure of materials for
28 many types of information, including, but not limited to, trade secrets or other confidential

1 research, development, or commercial information.” *Reilly v. Medianews Grp., Inc.*, No. C 06-
2 4332, 2007 U.S. Dist. LEXIS 8139, at *13 (N.D. Cal. Jan. 24, 2007) (quoting *Phillips v. Gen.*
3 *Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). *See* Fed. R. Civ. P. 26(c).

4 Courts regularly grant motions to seal under Rule 26(c) when a party has made a
5 particularized showing as Apple has done here. For example, in *Reilly*, the court denied an
6 intervenor’s motion to unseal seventeen of nineteen documents because they contained “detailed
7 financial information, including past and present revenues and projections of future revenues.”
8 2007 U.S. Dist. LEXIS 8139, at *11-13; *see also* *Bean v. Pearson Educ., Inc.*, 11-8030, 2012 U.S.
9 Dist. LEXIS 99540, at *5-6 (D. Ariz. July 16, 2012) (granting motion to seal non-public financial
10 sales and distribution information because it revealed defendants “market research” and “profit
11 and sales margins”).

12 The standard is higher for materials attached to dispositive motions. For dispositive
13 motions, there is “a strong presumption in favor of [public] access.” *Kamakana*, 447 F.3d at 1178
14 (citation omitted). However, the right of access is not absolute. A party can overcome the
15 presumption by meeting the “compelling reasons” standard. *Id.* “In general, ‘compelling
16 reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records
17 exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use
18 of records to gratify private spite, promote public scandal, circulate libelous statements, or release
19 trade secrets.” *Id.* at 1179 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

20 It is well established in particular that information containing trade secrets should be
21 sealed: “The publication of materials that could result in an infringement upon trade secrets has
22 long been considered a factor that would overcome this strong presumption.” *Apple Inc. v.*
23 *Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) (remanding case because lower court failed to
24 articulate reasons for its sealing decision).

25 Reuters suggested at the July 27 hearing that financial information has a sort of second-
26 class trade secret status. (*See* July 27 Hr’g Tr. at 12 (“Financial information just simply isn’t a
27 sealable trade secret of the same ilk as the secret formula of code or source code.”).) It isn’t true.
28

1 The majority of trade secret cases in federal and state court in California concern non-technical
2 information, most typically confidential financial or business information.

3 In *In re Electronic Arts, Inc.*, for example, the Ninth Circuit held that licensing pricing
4 terms, royalty rates, and payment terms all constitute information that “plainly falls within the
5 definition of ‘trade secrets.’” 298 Fed. App’x 568, 569 (9th Cir. 2008). The Court found these
6 license terms should be sealed, and noted that, “[i]n *Nixon*, the U.S. Supreme Court established
7 that the ‘right to inspect and copy judicial records is not absolute,’ and, in particular, ‘the
8 common-law right of inspection has bowed before the power of a court to insure that its records
9 are not used . . . as sources of business information that might harm a litigant’s competitive
10 standing.” *Id.* at 569 (quoting *Nixon*, 435 U.S. at 598). *Electronic Arts* also relied for its holding
11 on *Whyte v. Schlage Lock Co.*, a leading California trade secret case which recognized the trade
12 secret status of a wide variety of types of financial information including documents disclosing
13 “profit margin” and “costs of production,” as well as “confidential marketing research.” 101 Cal.
14 App. 4th 1443, 1455–56 (2002).

15 California’s Uniform Trade Secrets Act defines the term “trade secret” broadly.
16 Specifically, it provides:

17 “Trade secret” means information, including a formula, pattern, compilation,
18 program, device, method, technique, or process, that: (1) Derives independent
19 economic value, actual or potential, from not being generally known to the public
20 or to other persons who can obtain economic value from its disclosure or use; and
(2) Is the subject of efforts that are reasonable under the circumstances to
maintain its secrecy.

21 Cal. Civ. Code § 3426.1(d).

22 It is beyond dispute that financial information and other confidential business information
23 that meets this test constitute trade secrets. *See, e.g., Whyte*, 101 Cal. App 4th 1443 at 1455-56;
24 *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 399 F. Supp. 2d 1064, 1075 (N.D. Cal. 2005)
25 (upholding jury verdict for misappropriation of trade secrets including cost information contained
26 in data sheets); *First Advantage Background Servs. Corp. v. Private Eyes, Inc.*, 569 F. Supp. 2d
27 929, 935-36 (N.D. Cal. 2008) (finding allegations that defendant improperly disclosed plaintiff’s
28 confidential information “including profit margins” stated trade secret claim). *See also Courtesy*

1 *Temp. Serv. v. Camacho*, 222 Cal. App. 3d 1278, 1288 (1990) (billing rates and markup rates
2 “irrefutably” of commercial value and qualify for trade secret protection); *see also Electronic Arts*,
3 298 Fed. App’x at 569 (relying on similar Restatement definition of trade secret providing that
4 ““trade secret may consist of any formula, pattern, device or compilation of information which is
5 used in one’s business, and which gives him an opportunity to obtain an advantage over
6 competitors who do not know or use it””) (quoting *Restatement of Torts* § 757 cmt. B).

7 As a result, just as the Ninth Circuit itself did in *Electronic Arts*, courts in this Circuit
8 routinely hold that confidential business and financial information that qualifies as a trade secret
9 should be sealed under the *Kamakana* test. For example, in *AMC Tech., LLC v. Cisco Sys.*,
10 Magistrate Grewal held that amount of fees and royalties paid for development and licensing of
11 software should be sealed because disclosure would allow customers to determine Cisco’s profit
12 margins and “might be used for an improper purpose, including disclosure of Cisco’s trade secrets.
13 No. 5:11-cv-3403-PSG, 2012 U.S. Dist. LEXIS 9934 (N.D. Cal. Jan. 27, 2012). Similarly, in
14 *TriQuint Semiconductor v. Avago Techs., Ltd.*, the court granted a motion to seal confidential
15 financial information including market analysis information, cost information, capacity
16 information and profit margins for specific products. No. CV 09-1531, 2011 U.S. Dist. LEXIS
17 143942 at *10, 11, 21 (D. Ariz. Dec. 12, 2011). *See also Bauer Bros., LLC v. Nike, Inc.*, 09cv500,
18 2012 U.S. Dist LEXIS 72862 (S.D. Cal. May 24, 2012) (sealing financial information including
19 cost of goods sold for each product and confidential sales and marketing information); *Powertech*
20 *Tech., Inc., v. Tessera, Inc.*, No. C11-3121, 2012 U.S. Dist. LEXIS 75831, at *5 (N.D. Cal. May
21 31, 2012) (granting motion to seal details of license agreement); *Network Appliance, Inc. v. Sun*
22 *Microsystems*, No. C-07-6053, 2010 U.S. Dist. LEXIS 21721, at *7 (N.D. Cal. Mar. 10, 2010)
23 (sealing material that would subject third parties to competitive harm).

24 Moreover, Apple proposes to leave unsealed the material that the public has the greatest
25 interest in seeing—namely, proposing that most briefs, expert reports, and declarations enter the
26 public record fully or largely unredacted. Apple does not seek to conceal the parties’ arguments,
27 which will aid the public in understanding the judicial process. Rather, Apple seeks to seal
28 material that is highly specific, going well beyond what would aid the public in understanding the

1 parties' positions and the judicial process. This ensures the public has access to the material it has
2 the greatest interest in viewing. See, e.g. *Richardson v. Mylan Inc.*, Case No. 09-CV-1041-JM
3 (WVG), 2011 U.S. Dist. LEXIS 23969, at *7-8 (S.D. Cal. Mar. 9, 2011) (information "of
4 comparatively little value to the general public in terms of enhancing its understanding of the
5 judicial process" sealable) (internal quotation omitted); *Network Appliance*, 2010 U.S. Dist.
6 LEXIS 21721, at *13-14 (material that would "do little to aid the public's understanding of the
7 judicial process, but have the potential to cause significant harm" to one of the parties sealable).
8 The public will be able adequately to understand the rulings of the Court and the positions of the
9 parties from the material available publicly under Apple's proposal. The additional highly
10 sensitive details discussed in more detail below do not further that interest, but on the contrary
11 have the potential to cause significant harm to Apple, and in some cases third parties.

12 **II. THE COURT SHOULD GRANT APPLE'S NARROW REQUESTS TO SEAL**

13 **A. The Court Should Seal Apple's Confidential Financial Information**

14 **1. The Court should seal confidential financial information filed in 15 conjunction with nondispositive motions**

16 Apple seeks to seal the following portions of documents because they contain sensitive
17 financial information, the disclosure of which would cause Apple competitive harm:

- 18 • Paragraphs 116, 124, 127, 133, 136, 187, and 230 of the Expert Report of Terry
19 Musika ("Musika Expert Report") and Exhibits 16, 17.2, 20, 22, 26, 27, 34, 35, 39–
39.3, 41.3, 46, and 47 thereto;
- 20 • Portions of Exhibits 16, 17.2, 20, 22, 26, 27, 32–35, 39–39.3, 41.3, 46, and 47 to the
21 Supplemental Expert Report of Terry Musika ("Musika Supplemental Report");
- 22 • Paragraphs 175, 178–180, 188, and 193 of the Corrected Expert Report of Michael J.
23 Wagner ("Wagner Expert Report");
- 24 • Exhibit AA to the Declaration of Terry Musika in Support of Apple's Opposition to
25 Samsung's Daubert Motion ("Musika Declaration"); and
- 26 • Exhibits 20 and 21 to the Declaration of Christopher Price in Support of Samsung's
27 Reply in Support of Samsung's Motion to Strike ("Price Declaration Exhibits").

28 The portions of the documents identified above contain highly confidential financial
information concerning Apple's manufacturing capacity, product-specific profits and profit

1 margins, product-specific unit sales and revenue, costs, and valuation of its intangible assets.
2 Courts recognize that, provided appropriate efforts have been made to maintain their
3 confidentiality, these types of information constitute trade secrets, and a compelling need exists
4 for maintaining their confidentiality. *AMC Tech., LLC v. Cisco Sys.*, 2012 U.S. Dist. LEXIS 9934
5 (Jan. 27, 2012); *TriQuint Semiconductor v. Avago Techs. Ltd.*, 2011 U.S. Dist. LEXIS 143942
6 at *10, 11, 21 (D. Ariz. Dec. 12, 2011) (sealing confidential financial information including
7 market analysis information, cost information, capacity information and profit margins for
8 specific products).

9 Apple's financial information meets the definition of a trade secret under California's
10 UTSA. Apple has submitted a declaration in support of this motion from Jim Bean, its Vice
11 President of Worldwide Financial Planning and Analysis. The declaration explains, for each
12 portion of each document that Apple seeks to have sealed, why Apple keeps it confidential and
13 the steps Apple takes to do so. (Declaration of J. Bean, *passim*.) Each of these data are
14 competitively sensitive and derive value from the fact that they are not shared with the general
15 public or with others who could derive economic benefit from this data – Apple's competitors and
16 suppliers. (*Id.* at ¶¶ 4-8) If disclosed, Apple's competitors could use these data for "improper
17 purposes." *Kamakura*, 447 F.3d at 1179.

18 The documents listed above all were filed in conjunction with non-dispositive motions.
19 The Musika Expert Report, Musika Supplemental Report, the exhibits to those reports, and the
20 Musika Declaration were all filed in conjunction with Samsung's Motion to Exclude Opinions of
21 Certain of Apple's Experts. That Motion was not filed in connection with a summary judgment
22 motion and would not have conclusively decided the merits of any issue in this case. Similarly,
23 the Price Declaration Exhibits were filed in connection with a motion to strike, another
24 nondispositive motion.

25 These documents would all qualify for sealing under the "compelling reasons" standard.
26 Because these documents were filed in conjunction with nondispositive motions, however, Ninth
27 Circuit law provides that the "good cause" standard of Federal Rule of Civil Procedure 26(c)
28 applies. *See Kamakana*, 447 F.3d at 1179 ("[T]he public has less of a need for access to court

1 records attached only to non-dispositive motions because those documents are often ‘unrelated, or
2 only tangentially related, to the underlying cause of action.’”). Moreover, as the Ninth Circuit has
3 explained, for documents like these that were submitted to the Court in connection with
4 nondispositive motions, “‘the usual presumption of the public’s right of access is rebutted.’”
5 *Kamakana*, 447 F.3d at 1179 (quoting *Phillips*, 307 F.3d at 1213).

6 Here, good cause for sealing exists. Information concerning Apple’s manufacturing
7 capacity information is potentially valuable to Apple’s competitors because they could use such
8 information to increase production or decrease prices at times when Apple would be most
9 vulnerable to such actions. (Bean Decl. at ¶ 6.) Capacity information is also potentially valuable
10 to Apple’s suppliers, who could raise prices when Apple is most likely to increase capacity. (*Id.*)
11 Because of these significant risks of disclosure, Apple maintains its capacity data in confidence
12 by marking documents containing capacity data “confidential,” restricting access within Apple on
13 only a “need-to-know” basis, and sharing with third parties only pursuant to strict nondisclosure
14 agreements. (*Id.* at 3.) The court recognized at the July 27 hearing that capacity information
15 could qualify for sealing if properly protected. (July 27 Hr’g Transcript at 9:20). Apple’s
16 manufacturing capacity data are disclosed in Paragraphs 127 and 133 and Exhibits 17.2, 20, 26,
17 and 27 of the Musika Expert Report, Exhibits 17.2, 20, 26, and 27 of the Musika Supplemental
18 Report, Paragraphs 175, 178–180, 188, and 193 of the Wagner Expert Report, and the Price
19 Declaration Exhibits.

20 Information concerning Apple’s costs, profits, and profit margins is also valuable to its
21 competitors and suppliers. Although Apple considers margin data to be sensitive even when they
22 are aggregated over a long period of time for broad product categories, such data are far more
23 commercially valuable – and competitively sensitive – if they relate to specific products or to
24 discrete periods of time. (Bean Decl. at ¶ 7.) Apple’s competitors could use profits, costs, and
25 margins data for specific products to undercut Apple’s prices by determining the products for
26 which Apple has substantial profits, low costs, and wide margins and thus would be most
27 susceptible to a price cut. (*Id.* at ¶ 7.) Apple’s suppliers could use quarterly profits, costs, and
28 margins data to determine when Apple has the lowest margins and is thus more vulnerable to a

1 cost increase. (*Id.* at ¶ 8.) As it does with capacity data, Apple protects the confidentiality of its
2 profit, profit margins, and costs data by marking documents bearing such information
3 “confidential,” restricting access within Apple, and disseminating only pursuant to nondisclosure
4 agreements. (*Id.* at ¶ 3.) Apple’s profit margins, profits, and costs data are disclosed in
5 Paragraphs 116, 124, 136, 187, and 230 and Exhibits 16, 20, 22, 34, 35, 39–39.3, 46, and 47 of
6 the Musika Expert Report, Exhibits 16, 20, 22, 34, 35, 39–39.3, 46, and 47 of the Musika
7 Supplemental Report, and the Musika Declaration.

8 The portions of documents identified herein contain competitively valuable financial
9 information that Apple has undertaken extraordinary efforts to keep confidential. These
10 documents were submitted only in connection with nondispositive motions. The Court should
11 therefore grant Apple’s motion and seal these documents. *Reilly*, 2007 U.S. Dist. LEXIS 8139,
12 at *11-12; *Bean*, 2012 U.S. Dist. LEXIS 99540, at *5-6.

13 **2. Compelling reasons exist to seal confidential financial information**
14 **submitted in connection with dispositive motions**

15 Apple also seeks to seal portions of two documents filed in connection with dispositive
16 motions – Exhibits 32 and 33 to the Musika Expert Report – that contain highly confidential
17 financial information. Exhibits 32 and 33 are profit and loss statements related to iPhones and
18 iPads, respectively. Apple’s cost of goods sold (“COGS”), gross profit, gross margin, operating
19 expenses, operating profit, operating margin, and profit per unit are provided for each of these
20 product categories for each quarter beginning in fiscal year 2011 and continuing through the
21 second fiscal quarter of 2012.

22 Compelling reasons exist for sealing this highly confidential financial trade secret
23 information. *Electronic Arts*, 298 Fed. App’x at 569. These documents provide margin data on a
24 quarterly basis for the past year-and-a-half. These documents also provide Apple’s costs and
25 profits, which can be used to calculate Apple’s margins, over that same period of time. This
26 information has economic value derived from its not being known to Apple’s competitors or
27 suppliers, who could use it to calculate Apple’s current or future margins, thus giving them an
28 unfair advantage whether competing or contracting with Apple. (*Bean Decl.* at ¶ 9.) Because of

1 its sensitivity, Apple protects this information from widespread distribution by marking the
2 documents from which this information is derived “confidential,” restricting disclosure only to
3 those Apple employees who need access, and prohibiting dissemination to the general public. (*Id.*
4 ¶ 3)

5 The financial data found in Exhibits 32 and 33 of the Musika Expert Report are therefore
6 trade secrets of Apple. *Whyte*, 101 Cal. App 4th at 1455-56; *O2 Micro Int’l Ltd.*, 399 F. Supp. 2d
7 at 1075; *First Advantage Background Servs. Corp.*, 569 F. Supp. 2d at 935-36. As such, Apple’s
8 interest in limiting disclosure outweighs the public’s right of access. *Bauer Bros., LLC v. Nike,*
9 *Inc.*, 09cv500, 2012 U.S. Dist LEXIS 72862 (S.D. Cal. May 24, 2012) (finding compelling reason
10 to seal cost of goods sold for each product and confidential sales and marketing information);
11 *TriQuint Semiconductor*, 2011 U.S. Dist. LEXIS 143942 at *10, 11, 21 (finding compelling
12 reason to seal cost information and profit margins for specific products).

13 **B. The Court Should Seal Confidential Information Concerning Apple’s**
14 **Licenses and Acquisitions**

15 Apple seeks to seal portions of documents that relate to Apple’s confidential patent
16 licensing and strategic acquisition efforts. Courts have sealed documents concerning licensing
17 and acquisition agreements under both the “good cause” and “compelling reasons” standards.
18 *Elec. Arts*, 298 Fed. App’x at 569 (finding compelling reasons to seal licensing agreement); *MMI,*
19 *Inc. v. Baja, Inc.*, 743 F. Supp. 2d 1101, 1106 (D. Ariz. 2010) (finding good cause to seal
20 licensing agreement). Apple’s confidential information meets both standards here.

21 In particular, Apple seeks to seal portions of paragraphs 170 and 172 of the Musika Expert
22 Report. As stated above, the Musika Expert Report was filed in connection with nondispositive
23 motions, so the “good cause” standard applies. *Kamakura*, 447 F.3d at 1179. Good cause applies
24 to seal portions of each of these paragraphs. Paragraph 170 discusses a series of cross-licenses
25 between Apple and IBM; Apple seeks to seal only the discussions of payment terms and duration
26 of these cross-licenses. Although the first of this series of licenses was executed in 1991, its
27 provisions remain commercially sensitive because it is related to and similar to a cross-license
28 entered between Apple and IBM in 2002, which superseded the 1991 license and is still in force.

1 Paragraph 172 discusses a cross-license and settlement Apple entered into with Nokia; Apple
2 seeks to seal discussion of the payment terms and duration of this license as well. Apple keeps
3 confidential information relating to the specific terms of these licenses and has not disclosed them
4 publicly. (Bean Decl. at ¶ 9.) Disclosure of these terms could harm Apple by giving third parties
5 and potential licensees an insight into Apple’s licensing strategies and willingness to accede to
6 certain terms. (*Id.*) Consequently, good cause exists to seal portions of Paragraphs 170 and 172.
7 *See Powertech Tech.*, 2012 U.S. Dist. LEXIS 75831, at *5 (granting motion to seal details of
8 license agreement).

9 Apple also seeks to have seal certain, limited discussions of its licensing agreements in
10 Samsung’s Reply in Support of Its Motion to Strike Expert Testimony Based on Undisclosed
11 Facts and Theories (“Samsung’s Motion to Strike Reply”), another nondispositive motion.
12 Specifically, Apple asks that the Court seal discussions of four licenses on pages 2-3 and in
13 Paragraphs 16–34 of the Declaration of Michael J. Wagner in support of that motion.

14 Apple keeps these terms confidential, and would be harmed if they were disclosed for the
15 same reasons described above with respect to the IBM and Nokia licenses. There is therefore
16 both good cause and a compelling reason to grant sealing.

17 The Ninth Circuit has squarely held that non-public information contained in patent
18 licenses is the type of information “that plainly falls within the definition of ‘trade secrets.’” *In re*
19 *Electronic Arts, Inc.*, 298 Fed. Appx. at 569 (reversing denial of request to seal licensing terms
20 such as royalty rates and payment terms under “compelling reasons” test because they constitute
21 trade secret information whose loss might harm a party’s competitive standing); *see also TriQuint*
22 *Semiconductor, Inc. v. Avago Techs., Ltd.*, Case No. CV 09-1531-PHX-JAT, 2011 WL 6182346,
23 at *2-*4 (D. Ariz. Dec. 13, 2011) (redacting irrelevant financial information, including pricing
24 information, under compelling reason standard because disclosure “would harm TriQuint’s
25 bargaining position and would give competitors the ability to directly under TriQuint and unfairly
26 win business.”).

27 Apple seeks to seal the following portions of documents that contain non-public trade
28 secret information regarding Apple’s licensing and acquisition efforts:

- 1 • Musika Expert Report: excerpts found in ¶¶ 170 and 172–173
- 2 • Samsung’s Reply in Support of Its Motion to Strike Expert Testimony Based on
- 3 Undisclosed Facts and Theories: pages 2–3 and 5 and ¶¶ 16–34 of the Wagner
- 4 Declaration in support
- 5 • Wagner Expert Report: excerpts found in ¶¶ 397–398, 404, 524
- 6 • The Deposition Transcript of Boris Teksler at 154:8–155:10
- 7 • Donaldson Expert Report at ¶¶ 71–72, 75–88, and 99 n. 18
- 8 • Apple’s Responses to Samsung’s Fourth Set of Interrogatories at p. 28 ln. 15–16, p. 29
- 9 ln. 5–19, p. 31 ln. 8–22, and p. 39 ln. 16–20.
- 10 • Exhibit C to the Wagner Declaration

11 This licensing information is commercially valuable and has been kept confidential and
12 thus qualifies for trade secret protection. *In re Electronic Arts, Inc.*, 298 Fed.Appx. at 569; *Whyte*,
13 101 Cal. App 4th 1443 at 1455-56; *O2 Micro Int’l Ltd.*, 399 F. Supp. 2d at 1075. It is
14 commercially valuable because disclosure would harm Apple’s competitive standing, as well as
15 the competitive standing of the other parties to the licensing agreements at issue. (Bean Decl.
16 at ¶ 9.) In particular, if terms of licenses to patents not subject to any FRAND obligation) were
17 disclosed—in particular amounts paid, royalty rates and duration—potential licensees and
18 licensors could use this information to gain an unfair negotiating advantage over Apple and the
19 companies involved in the license agreements. (*Id.*) Disclosure of the terms of these Apple
20 license agreements would reveal what Apple did in the past, and could permanently damage
21 Apple’s negotiations in the future as third parties would expect similar terms, basing their
22 expectations on heavily negotiated agreements that were meant to be confidential. (*Id.*)

23 Further, Apple has kept the terms of these licensing agreements confidential. The licenses
24 contain non-disclosure provisions and Apple has honored these provisions and has not disclosed
25 the confidential information in these licenses publicly. (Bean Decl. at [].) Even within Apple,
26 very few employees have access to these agreements, and they are maintained in a highly secure
27 manner to prevent any inadvertent disclosure. (*Id.*)

1 Finally, the public interest in gaining access to Apple’s trade secret information regarding
2 its patent licenses is limited. *MMI, Inc. v. Baja, Inc.*, 743 F. Supp. 2d 1101, 1106 (D. Ariz. 2010)
3 (moving party demonstrated good cause to seal licensing agreement in patent infringement case in
4 part since “public has a diminished need for th[e] document because it is ‘only tangentially
5 related to the underlying cause of action.’” (quoting *Kamakana*, 447 F.3d at 1179)).

6 Because disclosure of licensing and acquisition information would harm Apple’s and third
7 parties’ competitive positions and the public interest in disclosure is limited, a compelling need to
8 seal exists. *Electronic Arts*, 298 Fed.Appx. at 569; *see also Powertech Tec., Inc., v. Tessera, Inc.*,
9 2012 U.S. Dist. LEXIS 75831, at *5 (N.D. Cal. May 31, 2012) (granting motion to seal details of
10 license agreement)

11 C. The Court Should Seal Confidential and Proprietary Market Research 12 Reports

13 1. Good cause exists for sealing Apple confidential buyer surveys

14 Apple seeks sealing of Exhibits 25 and 26 to the Declaration of Jason Bartlett in Support
15 of Apple’s Daubert Motion. That Motion would not have resolved the merits of any issue in this
16 Investigation and is thus nondispositive, such that the “good cause” standard applies to sealing of
17 Exhibits 25 and 26.

18 Exhibits 25 and 26 are Apple “Buyer Surveys,” confidential market research surveys that
19 Apple conducts in order to gain insight into its customers’ purchasing decisions and preferences.
20 (Joswiak Decl. ¶¶ 3-4.) Exhibit 25 comprises a lengthy excerpt from a quarterly report known as
21 the iPhone buyer survey conducted by Apple relating to the fourth fiscal quarter of 2010. (*Id.*
22 ¶ 3.) Apple generates these reports by conducting monthly surveys of buyers of its iPhone
23 products and compiling them each quarter. Exhibit 25 contains country-by-country data on the
24 reasons customers buy Apple’s iPhone over other products such as the Android products sold by
25 Samsung. (*Id.*) It concerns the iPhone 4, a phone that Apple still actively markets and sells. (*Id.*)
26 Apple continues to make use of the information contained in Exhibit 25 today. (*Id.*)

27 Exhibit 26 is an excerpt from an iPad buyer survey for the month of August 2010. (*Id.* ¶
28 4.) Similar to the iPhone buyer surveys, it reports and analyses results obtained from surveys of

1 iPad buyers that Apple conducted in August 2010. (*Id.*) Like Exhibit 25, Exhibit 26 discusses
2 drivers for Apple’s customers’ purchasing decisions and preferences. (*Id.*) Apple considers this
3 information to be current and makes use of it in its marketing and product decisions. (*Id.*) There
4 was no product like the iPad when it was released in April 2010. Obtaining information from
5 August 2010 would be very valuable to companies who are trying to put forward competing
6 products. (*Id.*)

7 The iPhone and iPad Buyer Surveys excerpted in Exhibits 25 and 26 are highly
8 confidential and Apple employs strict measures to protect them from disclosure. Apple stamps
9 the documents confidential on a “need to know” basis. (*Id.* ¶ 7.) Apple circulates the buyer
10 surveys only to a small, select group of executives. (*Id.*) Apple’s Vice President of Worldwide
11 iPod, iPhone and iOS Product Marketing, Greg Joswiak, personally oversees dissemination of
12 buyer surveys outside of this group of executives, routinely denies access, and routinely approves
13 further distribution only when limited to a survey-question-by-survey-question basis. (*Id.*)

14 The information contained in Exhibits 25 and 26 is extremely valuable. Apple alone has
15 the access to its customer base needed to conduct the in-depth analysis found in Apple’s buyer
16 reports. Because they are unable to access this information, Apple’s competitors can only
17 speculate about the preferences, profiles, and purchasing patterns of Apple’s customers. (*Id.* ¶ 5.)
18 Moreover, Exhibits 25 and 26 reveal not only Apple’s customers’ preferences, but also the
19 conclusions that Apple draws based on those preferences. (*Id.*) If a competitor were granted
20 access to these Exhibits, it would be better able to compete against Apple in the marketplace and
21 anticipate Apple’s next product offerings, and would gain an unfair tactical advantage. (*Id.*)

22 Courts have held that market analysis information is sealable under even the higher
23 compelling reasons standard applicable to documents filed with dispositive motions. *TriQuint*
24 *Semiconductor*, 2011 U.S. Dist. LEXIS 143942 at *10, 11, 21 (finding compelling reasons to seal
25 market analysis); *Bauer Bros., LLC*, 2012 U.S. Dist LEXIS 72862, at *6 (finding compelling
26 reasons to seal confidential sales and marketing information). As such, Exhibits 25 and 26
27 readily meet the lower good cause standard for sealing based on their economic value due to their
28 confidentiality, Apple’s efforts to preserve their confidentiality, and the harm that Apple would

1 suffer if that confidentiality was violated. Accordingly, the Court should grant Apple's request to
2 seal Exhibits 25 and 26.

3 **2. Good cause supports sealing information derived from confidential**
4 **third-party market research reports**

5 Finally, Apple seeks to seal portions of Exhibits 11.1, 12.1, and 13.1 of the Musika Expert
6 Report and Musika Supplemental Report. These Exhibits contains full datasheets from market
7 analysis reports prepared by IDC, a third-party research firm. Courts have sealed market analysis
8 information such as found in these exhibits. *TriQuint Semiconductor v. Avago Techs. Ltd.*,
9 2011 U.S. Dist. LEXIS 143942 at *10, 11, 21 (D. Ariz. Dec. 12, 2011) (granting motion to seal
10 market analysis information).

11 Exhibits 11.1, 12.1, and 13.1 were submitted to the Court in conjunction with
12 nondispositive motions, such that the "good cause" standard applies. *Kamakura*, 447 F.3d at
13 1179. Here, good cause exists because widespread dissemination of Exhibits 11.1, 12.1, and 13.1
14 would impair IDC's ability to sell the reports from which those datasheets were taken, thus
15 causing it severe commercial harm. (Sabri Decl. ¶ 4.) (Dkt. No. 1408-2.) Because of the risk of
16 widespread disclosure, IDC requires purchasers of its research reports agree not to disclose them
17 to third parties. (*Id.* at ¶ 3.) The Court has recognized the propriety of sealing such information if
18 an appropriate showing is made. *See* July 27 Hearing Tr. at 10:18-20.

19 The public interest in access to the portions of Exhibits 11.1, 12.1, and 13.1 for which
20 Apple seeks sealing is low. These portions relate to market shares held by nonparties to this
21 litigation; Apple does not seek sealing of the portions that relate to Apple and Samsung's
22 respective market shares.

23 Because the risk of commercial harm to IDC is severe and the public interest in access is
24 low, the Court should grant sealing of portions of Exhibits 11.1, 12.1, and 13.1 as Apple has
25 requested.

26 **III. CONCLUSION**

27 For the foregoing reasons, Apple respectfully requests that the Court grant Apple's
28 Motion and seal the following documents:

1 1. **Exhibits 25 and 26 to the Declaration Jason Bartlett in Support of Apple’s**
2 **Daubert Motion** (APLNDC-Y0000027256-27303 and APLNDC-Y0000023361-23393).

3 2. **Portions of Expert Report of Terry L. Musika and exhibits thereto.** The
4 report with exhibits was filed as Exhibit A to the Declaration of Terry Musika in Support of
5 Apple’s Opposition to Samsung’s Daubert Motion. The report without exhibits was filed as
6 Exhibit 3 to the Declaration of Joby Martin in Support of Samsung’s Daubert Motion. Excerpts
7 of the report were filed as Exhibit Q to the Declaration of Mia Mazza in Support of Apple’s
8 Opposition to Samsung’s Daubert Motion and Exhibit 6 to the Declaration of Joby Martin in
9 Support of Samsung’s Daubert Motion.

10 3. **Portions of Supplemental Expert Report of Terry L. Musika and exhibits**
11 **thereto.** The report with exhibits was filed as Exhibit B to the Declaration of Terry Musika in
12 Support of Apple’s Opposition to Samsung’s Daubert Motion. Certain exhibits were also filed as
13 Exhibits 1 and 10 to the Declaration of Joby Martin in Support of Samsung’s Daubert Motion;
14 Exhibits C and E to the Declaration of Terry Musika in Support of Apple’s Opposition to
15 Samsung’s Motion for Summary Judgment; Exhibits K, Y, and Z to the Declaration of
16 Terry Musika in Support of Apple’s Opposition to Samsung’s Daubert Motion; and Exhibit 7 to
17 the Declaration of Joby Martin in Support of Samsung’s Daubert Motion.

18 4. **Portions of Samsung’s Reply in Support of Motion to Strike** (Dkt. No. 1060)
19 and the Declaration of Michael Wagner in Support thereof.

20 5. **Portions of Corrected Expert Report of Michael J. Wagner (Vol. 1).** The
21 report was filed as Exhibit B to the Declaration of Michael Wagner in Support of Samsung’s
22 Reply in Support of Motion to Strike.

23 6. **Portions of Exhibit AA to the Declaration of Terry Musika in Support of**
24 **Apple’s Opposition to Samsung’s Daubert Motion.**

25 7. **Exhibits 20 and 21 to the Declaration of Christopher Price in Support of**
26 **Samsung’s Reply in Support of Samsung’s Motion to Strike.**

27 8. **Portions of Exhibit P1 to the Declaration of David Hecht in Support of**
28 **Samsung’s Opposition to Apple’s Motion for Partial Summary Judgment.**

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9. **Portions of Exhibit 32 to the Martin Declaration in Support of Samsung’s Daubert Motion.**

10. **Portions of Exhibit 67 to the Declaration of Brett Arnold in Support of Samsung’s Motion for Summary Judgment.**

11. **Portions of Exhibit A to the Declaration of Janusz A. Ordover in Support of Apple’s Opposition to Samsung’s Motion for Summary Judgment.**

12. **Portions of Exhibit C to the Declaration of Michael Wagner in Support of Samsung’s Reply in Support of Motion to Strike.**

13. **Exhibits 1-6 and 13 to the Declaration of Christopher Price in Support of Samsung’s Reply in Support of Samsung’s Motion to Strike.**

Dated: July 30, 2012

MORRISON & FOERSTER LLP

By: /s/ Michael A. Jacobs
MICHAEL A. JACOBS

Attorneys for Plaintiff
APPLE INC.

EXHIBIT 6

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE, INC., a California corporation,	)	Case No.: 11-CV-01846-LHK
)	
Plaintiff,	)	ORDER GRANTING-IN-PART AND
	)	DENYING-IN-PART MOTIONS TO
v.	)	SEAL
)	
SAMSUNG ELECTRONICS CO., LTD., a)	
Korean corporation; SAMSUNG)	
ELECTRONICS AMERICA, INC., a New York)	
corporation; SAMSUNG)	
TELECOMMUNICATIONS AMERICA, LLC,)	
a Delaware limited liability company,)	
)	
Defendants.)	
)	

Before the Court are numerous administrative motions to seal documents, which have been filed by both litigants as well as a substantial number of third parties. *See e.g.*, ECF Nos. 1328, 1334, 1340, 1376, 1378, 1390, 1394, 1396, 1400, 1407, 1414, 1481, 1486, 1488, 1489, 1490, 1493, 1495, 1498, 1499, 1506, and 1638. Although both litigants had sealing motions pending before this Court, each has filed renewed motions to seal. These most recent sealing motions supersede the prior motions, and the Court will only address the renewed motions to seal. These administrative motions relate to three types of documents: (1) litigants' documents that will likely be introduced in the trial that began on July 30, 2012; (2) documents which were used exclusively for prior motions, such as the parties' cross motions for summary judgment; and (3) third party documents produced in discovery and to be used by either party at trial.

1 On August 6, 2012, the parties filed a Joint Stipulation¹ that may obviate the need for
2 rulings on some of the parties' trial exhibits. See ECF No. 1597. Nevertheless, the Court will rule
3 on the most recent set of administrative motions to seal in order to settle any questions about
4 precisely what information will be sealed at trial. Moreover, the sealing motions for documents
5 which relate to previously filed motions are not covered by the parties' stipulation and must be
6 ruled on separately.

7 I. Legal Standard

8 Historically, courts have recognized a "general right to inspect and copy public records and
9 documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S.
10 589, 597 & n.7 (1978). "Unless a particular court record is one 'traditionally kept secret,' a 'strong
11 presumption in favor of access' is the starting point. *Kamakana v. City and Cnty. of Honolulu*, 447
12 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122,
13 1135 (9th Cir. 2003)). In order to overcome this strong presumption, a party seeking to seal a
14 judicial record must articulate justifications for sealing that outweigh the public policies favoring
15 disclosure. See *id.* at 1178-79. Because the public's interest in non-dispositive motions is
16 relatively low, a party seeking to seal a document attached to a non-dispositive motion need only
17 demonstrate "good cause." *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010)
18 (applying "good cause" standard to all non-dispositive motions, because such motions "are often
19 unrelated, or only tangentially related, to the underlying cause of action" (citing *Kamakana*, 447
20 F.3d at 1179)).

21 Conversely, "the resolution of a dispute on the merits, whether by trial or summary
22 judgment, is at the heart of the interest in ensuring the 'public's understanding of the judicial
23 process and of significant public events.'" *Kamakana*, 447 F.3d at 1179 (quoting *Valley*
24 *Broadcasting Co. v. U.S. Dist. Court for Dist. of Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)). Thus,
25 a party seeking to seal a judicial record attached to a dispositive motion or presented at trial must
26 articulate "compelling reasons" in favor of sealing. See *id.* at 1178. "The mere fact that the
27 production of records may lead to a litigant's embarrassment, incrimination, or exposure to further

28 ¹ The Court adopts the Joint Stipulation, with the exception of paragraph five.

1 litigation will not, without more, compel the court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at
2 1136). “In general, ‘compelling reasons’ . . . exist when such ‘court files might have become a
3 vehicle for improper purposes,’ such as the use of records to . . . release trade secrets.” *Id.* at 1179
4 (citing *Nixon*, 435 U.S. at 598). The Ninth Circuit has adopted the Restatements’ definition of
5 “trade secret” for purposes of sealing, holding that “[a] ‘trade secret may consist of any formula,
6 pattern, device or compilation of information which is used in one’s business, and which gives him
7 an opportunity to obtain an advantage over competitors who do not know or use it.” *In re*
8 *Electronic Arts*, 298 Fed. App’x 568, 569-70 (9th Cir. 2008) (quoting *Restatement of Torts* § 757,
9 cmt. b). Additionally, “compelling reasons” may exist if sealing is required to prevent judicial
10 documents from being used “‘as sources of business information that might harm a litigant’s
11 competitive standing.’” *Id.* at 569 (9th Cir. 2008) (citing *Nixon*, 435 U.S. at 598).

12 II. Litigants’ Administrative Motions to Seal

13 Pursuant to this Court’s instructions, both Apple and Samsung have refiled administrative
14 motions to file certain documents under seal. The parties have been advised that, pursuant to Ninth
15 Circuit law, there will be a strong presumption that documents will be publicly available, *see*
16 *Kamakana*, 447 F.3d at 1178, and that any motions seeking to overcome this presumption must be
17 narrowly tailored. With these requirements in mind, the Court now considers each of the litigant’s
18 motions.

19 A. Apple’s Administrative Motion to Seal Trial Exhibits

20 Apple’s Administrative Motion to Seal Trial Exhibits asks the Court to seal four categories
21 of information: (1) confidential financial information; (2) confidential source code; (3) proprietary
22 marketing reports; and (4) terms of licensing agreements. Mot. to Seal Trial Exs. at 7-13. The
23 Court considers each of these categories in turn.

24 1. Apple’s Motion to Seal Confidential Capacity Information

25 Apple moves to seal trial exhibits containing information about its production and supply
26 capacity, arguing that disclosure of such information would cause Apple competitive harm. Mot.
27 to Seal Trial Exs. at 7. According to Apple, disclosure of this capacity data would allow Apple’s
28 competitors to alter their production schedules, so that they could increase production when Apple

1 is stretched thin or lower their prices when Apple has excess inventory. Decl. of Jim Bean in Supp.
2 of Mot. to Seal Trial Exs. (“Bean Trial Decl.”) ¶ 6. Additionally, it could allow Apple’s suppliers
3 to extract higher prices for component parts when Apple most needs them. *See id.* Similarly,
4 Apple argues that product line information (that is, financial details broken out by product) could
5 give competitors insight into the relative success of different Apple products. *Id.* ¶ 7. According to
6 Apple, this would allow competitors to alter their investments in their own competing products. *Id.*

7 The Court agrees that information relating to Apple’s production and supply capacity is
8 “trade secret” under Ninth Circuit law and is therefore properly sealed. Although the Court is
9 mindful of the public’s interest in access to judicial documents, disclosure of this information
10 would cause substantial competitive harm to Apple. Competitors and suppliers armed with
11 knowledge of Apple’s capacity would be able to alter their business and pricing models to gain an
12 unfair advantage over Apple in such a way that would “harm its competitive standing.” *See*
13 *Electronic Arts*, 298 Fed. App’x at 569 (citing *Nixon*, 543 U.S. at 598). Suppliers, for instance,
14 could predict when Apple would most need to increase supply and leverage this knowledge to
15 exact substantial price increases. *See* Bean Trial Decl. ¶ 6. Similarly, competitors could lower
16 their prices during periods when Apple has excess capacity and is therefore most vulnerable to a
17 price cut. *See id.* Although Apple seeks to seal *past* capacity data, such data is cyclical and would
18 allow competitors and suppliers to discover the patterns in Apple’s capacity that would make it
19 easy to predict Apple’s current and future capacity constraints. *See id.*

20 Additionally, while production and supply capacity is one factor in each side’s damages
21 calculations, the core of the parties’ damages analysis revolves around profits, profit margins,
22 costs, and unit sales. Apple’s production capacity serves only as a *limit* on the potential damages
23 awarded, not as a *driver* of the damage claims. Indeed, Apple’s production capacity is a secondary
24 consideration in each side’s damages analysis and, as such, is only indirectly relevant to one
25 particular kind of damages—Apple’s lost profits claims. The potential for “harm to [Apple’s]
26 competitive standing” is quite high, however, if this information is released to the public, *see*
27 *Electronic Arts*, 298 Fed. App’x at 569 (citing *Nixon*, 543 U.S. at 598). Because Apple’s interest
28 in keeping its production capacity information under seal substantially outweighs the public’s

1 interest in accessing it, the Court agrees that “compelling reasons” have been shown for keeping
2 Apple’s production capacity under seal, *see Kamakana*, 447 F.3d at 1179. Likewise, as discussed
3 later in this Order, Samsung’s production capacity information will also be sealed.

4 2. Apple’s Motion to Seal Confidential Financial Data

5 Apple moves to seal trial exhibits containing sensitive financial information, arguing that
6 disclosure of such information would cause Apple competitive harm. Mot. to Seal Trial Exs. at 7.
7 In particular, Apple seeks to seal information pertaining to product-specific profits and profit
8 margins, product-specific unit sales and revenue, and costs. *Id.* According to Apple, disclosure of
9 this information would cause substantial harm to Apple’s competitive standing. *Id.*

10 Apple argues that disclosure of this financial information would allow competitors to price
11 their products to gain an unfair advantage over Apple. Bean Trial Decl. ¶ 8. In particular, Apple
12 claims that competitors could undercut Apple by pricing their products at a level that would be
13 unprofitable to Apple. *Id.* Moreover, Apple argues that its suppliers could rely on profit and cost
14 information to leverage higher prices from Apple during negotiations. *See id.*

15 The Court is not persuaded that Apple’s interest in sealing its financial data outweighs the
16 public’s interest in accessing this information. Despite having multiple opportunities to brief this
17 issue, *see, e.g.*, ECF Nos. 1317, 1495, 1499, Apple has not sufficiently articulated facts that support
18 a “compelling reason” to keep this information from the public. Indeed, Apple has failed to
19 convince the Court that profit, profit margin, cost, and/or unit sales data would lead to the
20 competitive harms that Apple claims in its briefing. *See, e.g.*, Bean Trial Decl. ¶ 8. For instance,
21 Apple claims that its cost and profit information would allow competitors to “determine exactly
22 what price level would make a given product unprofitable to Apple, and target their product
23 offerings at exactly that price.” *Id.* This argument, however, relies on two critical assumptions, for
24 which Apple provides no support. First, Apple assumes that its products are perfectly
25 interchangeable with those of its competitors, such that Apple would be forced to exactly match its
26 competitors’ prices. Second, it assumes that Apple’s competitors could profitably maintain this
27 critical price point, since it is well known that “predatory pricing schemes are rarely tried, and even
28 more rarely successful.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574,

1 589 (1986). Accordingly, Apple’s argument is unpersuasive and is therefore not a “compelling
2 reason” for sealing as required by *Kamakana*.

3 Moreover, although Apple argues that its profit, profit margins, cost and unit sales data
4 would allow competitors to better tailor their product offerings to counter Apple, Apple has not
5 explained how *past* profit and unit sales data can be used to meaningfully predict Apple’s *future*
6 business plans. Although Apple implies that its capacity constraints are relatively periodic, *see*
7 *Bean Trial Decl.* ¶ 6, it makes no similar allegations with regards to profits, profit margins, costs,
8 or unit sales information. Indeed, because Apple updates its product lines relatively frequently, it
9 is not obvious that historical profit, profit margin, cost, or unit sales data for past products would
10 provide competitors with an advantage over future products.

11 Furthermore, the financial information that Apple seeks to seal is essential to each party’s
12 damages calculations. For this trial in particular, which involves claims of up to \$2.5 billion in
13 damages, this data is extremely important to the public’s understanding of the eventual outcome,
14 which has the potential for wide ranging ripple effects. Indeed, this trial is especially unusual in
15 the extraordinary public interest it has generated. Thus, the public has a substantial interest in full
16 disclosure of this information. The Court finds that Apple has not articulated a “compelling
17 reason” for sealing its financial data that outweighs the public’s interest in accessing it; accordingly
18 this information will not be sealed. *See Kamakana*, 447 F.3d at 1178-79 (“[T]he party [seeking to
19 seal a document] must articulate compelling reasons supported by specific factual findings that
20 outweigh the general history of access and the public policies favoring disclosure, such as the
21 public interest in understanding the judicial process.” (internal quotation marks and citations
22 omitted)).

23 Having determined the general categories of financial data that may be sealed and having
24 reviewed each of the documents that Apple seeks to seal, the Court now applies these principles to
25 the particular documents that Apple has moved to seal. For the sake of efficiency, the Court
26 presents its conclusions in the table below. All rulings are consistent with the rationale articulated
27 above. Should either party seek to introduce at trial any exhibit for which the motion to seal has
28 been granted-in-part and denied-in-part, the party seeking to keep the document under seal must

1 file its proposed redactions by 8:00 a.m. the day before the redacted document is introduced so the
 2 Court can approve the redactions. The rulings regarding trial exhibits contained herein apply only
 3 to those exhibits admitted at trial.

Trial Exhibit	Ruling
PX25	GRANTED-IN-PART and DENIED-IN-PART. Apple has over-designated the information in this exhibit to be sealed. The Court DENIES Apple's motion to seal this exhibit, with the sole exception of Apple's proposed redactions of capacity data, <i>see, e.g.</i> , PX25.9-10.
PX67	GRANTED-IN-PART and DENIED-IN-PART. Apple has over-designated the information in this exhibit to be sealed. The Court DENIES Apple's motion to seal this exhibit, with the sole exception of Apple's proposed redactions of royalty information, <i>see, e.g.</i> , PX67 Column O; <i>see also Electronic Arts</i> , 298 Fed. App'x at 569 (finding "pricing terms, royalty rates, and guaranteed minimum payment terms" of a license agreement to "plainly fall[] within the definition of 'trade secrets'").
PX102	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
PX103	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
PX181	DENIED. Apple seeks to redact profit, profit margin, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
PX182	GRANTED. Apple seeks only to redact information related to its capacity. The Court finds that "compelling reasons" exist for sealing such data that outweigh the public's interest in access.
DX541	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
DX542	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
DX543	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
DX544	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
DX581, 587, and 589	GRANTED. Apple seeks to seal these documents which contain confidential financial data as well as analysis and strategy discussions based on that data. Although the Court has determined that financial data alone is not sealable, these documents contain substantially more

	than data alone. Apple's financial analysis and strategy for <i>future</i> corporate plans have the potential to cause considerable competitive harm to Apple if publically disclosed. Accordingly, the Court finds that the risk of "harm [to Apple's] competitive standing" substantially outweighs the public's interest in disclosure and therefore grants Apple's motion to seal. <i>See Electronic Arts</i> , 298 Fed. App'x at 569 (citing <i>Nixon</i> , 543 U.S. at 598).
DX755	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
DX756	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
DX777	DENIED. Apple seeks to redact unit sales, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
DX778	DENIED as moot, per the Joint Stipulation. <i>See</i> ECF No. 1597.
DX779	DENIED. Apple seeks to redact unit sales, profit margin, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.
DX780	DENIED. Apple seeks to redact unit sales, profit margin, revenue, and cost data. The Court finds that Apple has failed to provide "compelling reasons" for sealing such data that outweigh the public's interest in access.

3. Apple's Motion to Seal Confidential Source Code

Apple moves to seal trial exhibits PX63, PX121, and DX645 on the grounds that they contain highly confidential source code. Additionally, Apple moves to seal trial exhibit PX110, as it contains detailed schematics of the Apple iBook and Apple iSight. "[S]ource code is undoubtably[sic] a trade secret." *Agency Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011). Moreover, Reuters does not oppose this request. Accordingly, the Court GRANTS Apple's motion to seal trial exhibits PX63, PX121, PX110, and DX645.

4. Apple's Motion to Seal Confidential and Proprietary Market Research Reports

Apple moves to seal two classes of market research reports: internal reports gathered and prepared by Apple and third-party reports obtained from nonparty IDC, whose business model revolves around gathering and selling such data. The internal reports that Apple moves to seal are contained in trial exhibits DX534, DX614, DX617, DX701, and DX766-776. The third-party reports are contained in DX536 and DX537.

1 Apple argues that its internal market research reports contain valuable data that could cause
2 it competitive harm if disclosed to its competitors. See Mot. to Seal Tr. Exs. at 11. In particular,
3 Apple argues that because its competitors lack access to Apple’s customer base, its competitors
4 cannot replicate these survey results. Accordingly, Apple believes that the data contained in these
5 reports give it “an opportunity to obtain an advantage over competitors who do not know or use it”
6 and thus is sealable as a trade secret. See *Electronic Arts*, 298 Fed. App’x at 569-70 (adopting the
7 definition of “trade secret” propounded by the Restatement of Torts as something “consisting of
8 any formula, pattern, device or compilation of information which is used in one’s business, and
9 which gives him an opportunity to obtain an advantage over competitors who do not know or use
10 it.” (citing *Restatement of Torts* § 757, cmt. b)).

11 The Court is not persuaded. Apple’s desire to protect its own market surveys reporting on
12 its consumers’ usage habits, buying preferences, and demographics is not sufficient to meet the
13 “compelling reason” standard required for sealing at this stage. See *Kamakana*, 447 F.3d at 1179.
14 While Apple is presumably correct that its consumer base is different than Samsung’s, Apple’s
15 claim that Samsung could not replicate the analysis contained in these exhibits is not convincing.
16 Surveys about consumer preferences are commonplace, and Apple has not argued convincingly
17 that similar data is not already available to its competitors. Moreover, because Apple claims that
18 these surveys inform its future product and marketing plans, it stands to reason that its competitors
19 may infer the most significant results by simply observing Apple’s product releases and marketing
20 campaigns.

21 In short, Apple has not established that it is likely to be harmed by the release of these
22 surveys. In contrast, these surveys play an important role in Apple’s damages claims. Apple is
23 asking for a substantial amount of damages, and these surveys play an important role in explaining
24 to the public how Apple arrived at its demand for damages. Thus, Apple’s justification for sealing
25 does not outweigh the public policies favoring disclosure. Accordingly, the Court finds that Apple
26 has failed to articulate “compelling reasons” for sealing trial exhibits DX534, DX614, DX617,
27 DX701, and DX766-776 and therefore DENIES Apple’s motion with respect to these exhibits.
28

1 Apple also argues that the Court should seal exhibits DX536 and DX537, which contain a
2 full market research report, prepared by nonparty IDC, as well as the underlying data. According
3 to Apple, IDC's business model revolves around gathering and selling these data and reports, so
4 public disclosure of these exhibits could result in substantial commercial harm. *See* Mot. to Seal.
5 Tr. Exs. at 12. Additionally, Apple explains that IDC has agreed to allow limited use of its data
6 during trial, and only objects to publications of the full report and data spreadsheet. Accordingly,
7 Apple argues that the public's interest in access to these underlying documents is low, while the
8 potential for harm to IDC is quite high.

9 The Court agrees. The public's interest in understanding the outcome of this litigation will
10 be sufficiently satisfied by the limited data disclosed at trial. Thus, the marginal public benefit that
11 would result from disclosure of the full reports contained in DX536 and DX537 is low.
12 Additionally, public disclosure would cause significant harm to IDC's competitive standing. *In re*
13 *Electronic Arts*, 298 Fed. App'x at 569 (citing *Nixon*, 435 U.S. at 598). Indeed, if these reports
14 were made publically available, IDC's customers would have no need to purchase them—
15 disclosure would not only harm IDC's competitive standing, it would completely destroy it.
16 Accordingly, these exhibits are sealable under Ninth Circuit law, *id.*, so the Court GRANTS
17 Apple's motion to seal DX536 and DX537. Nevertheless, the parties have previously represented
18 that they would not need, and would not seek, to introduce the full IDC reports at trial. The Court
19 strongly encourages the parties to use limited IDC data at trial and thus obviate the need for
20 sealing.

21 5. Apple's Motion to Seal Apple's License Information

22 Apple moves to seal terms of licensing agreements that it has entered into with various third
23 parties. It argues that disclosing the terms of these licensing agreements will put it at a
24 disadvantage in negotiations for future licensing deals. The Court agrees with respect to pricing
25 terms, royalty rates, and minimum payment terms of the licensing agreements, as set forth in
26 *Electronic Arts*, 298 Fed. App'x at 569. Disclosing this information to the public will create an
27 asymmetry of information for Apple in the negotiation of future licensing deals. *See id.* (finding
28 "pricing terms, royalty rates, and guaranteed minimum payment terms" of a license agreement to

1 “plainly fall[] within the definition of ‘trade secrets’”). Accordingly the Court will follow the
2 Ninth Circuit’s guidance and seal all information related to the payment terms of Apple’s licensing
3 agreements.

4 The Court has reviewed each exhibit that Apple seeks to seal. The following table reflects
5 the Court’s rulings with respect to Apple’s proposed redactions to each trial exhibit. All rulings are
6 pursuant to the rationale articulated above.

Trial Exhibit	Ruling
DX630	GRANTED-IN-PART and DENIED-IN-PART. The Court GRANTS Apple’s motion with regards to the proposed redactions to information in the column labeled “Payments,” but DENIES Apple’s motion with regards to the proposed redactions to information in columns labeled “Licensor,” “Title,” “Effective Date,” “Date Last Signed,” “Licensed Products/Technology,” “Term,” and “Geographic Scope.”
DX757	GRANTED-IN-PART and DENIED-IN-PART. The Court GRANTS Apple’s motion with respect to the royalty rates and payments, but DENIES it with respect to the list of Apple’s licensors.
DX758	GRANTED-IN-PART and DENIED-IN-PART. The Court GRANTS Apple’s motion with respect to the proposed redactions of royalty rates and payments, but DENIES it with respect to the proposed redactions of the list of Apple’s licensors.
PX76	GRANTED-IN-PART and DENIED-IN-PART. The Court GRANTS Apple’s motion with regards to the proposed redactions to information in the column labeled “Monetary Consideration,” but DENIES Apple’s motion with regards to the proposed redactions to information in columns labeled “Apple License Partner,” “Effective Date,” “Expiration Date,” “Term of Agreement,” “Includes Rights to UMTS-Related Patents?,” “Includes Rights to Other Patents?,” and “Cross License?”
PX78	GRANTED. Apple seeks only to redact quantity, unit price, and amounts due to Intel in this invoice, all of which relate to capacity or financial terms of third-party agreements.
DX593	GRANTED. Apple seeks only to redact proposed payment terms for a settlement, cross-licensing agreement between Apple and Motorola.

24 B. Apple’s Administrative Motion to Seal Prior Motions and Exhibits Thereto

25 Apple moves to seal exhibits from *Daubert* motions, motions in limine, and other pretrial
26 motions containing sensitive financial information, arguing that disclosure of such information
27 would cause Apple competitive harm. In particular, Apple seeks to seal information pertaining to
28 Apple’s manufacturing capacity, product-specific profits and profit margins, product-specific unit

1 sales and revenue, and costs. According to Apple, disclosure of this information would cause
2 substantial harm to Apple's competitive standing.

3 As an initial matter, it should be noted that Apple seeks to seal information filed with both
4 dispositive and non-dispositive motions. As noted earlier, in general, a party seeking to seal
5 documents attached to a non-dispositive motion need only demonstrate "good cause" to keep the
6 documents under seal, while a party seeking to seal documents attached to a dispositive motion or
7 used at trial must meet the higher "compelling reasons" standard. *See Pintos*, 605 F.3d at 678;
8 *Kamakana*, 447 F.3d at 1179. This is because non-dispositive motions are almost always
9 unrelated, or only tangentially related, to the merits of the underlying issues in the case. *See*
10 *Pintos*, 605 F.3d at 678. In this case, however, Apple seeks to seal documents attached to non-
11 dispositive motions that govern the admissibility of evidence at trial. Because the admissibility of
12 evidence is such a closely contested issue in this trial, which has become crucial to the public's
13 understanding of the proceedings, the Court will apply the "compelling reasons" standard to
14 documents attached to these non-dispositive motions as well.

15 The Court has reviewed all documents that Apple seeks to seal in its renewed motion to
16 seal, and, consistent with the Court's earlier discussion, Apple will be permitted to seal information
17 related to its production capacity as well as payment terms of licensing agreements. In general,
18 however, all other information will be made public, unless otherwise specified by the Court. The
19 following table contains rulings on each exhibit that Apple moves to seal, consistent with these
20 general principles. For each exhibit to a prior motion where the Court has denied or granted-in-
21 part and denied-in-part Apple's motion to seal, Apple shall refile that exhibit consistent with this
22 Order within seven days. Samsung shall do the same for any exhibit to a prior motion for which its
23 motion to seal has been denied or granted-in-part and denied-in-part.

Exhibit	Ruling
Exhibit A to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	GRANTED-IN-PART and DENIED-IN-PART. The Court GRANTS Apple's motion with respect to its proposed redactions in paragraphs 127, 133, 170, and 172. Paragraphs 127 and 133 contain information on Apple's capacity, and paragraphs 170 and 172 contain payment terms of Nokia and IBM cross-licensing deals. Additionally, the Court GRANTS Apple's motion with respect to

1		its proposed redactions in Exh. 17, 26, and 27, all of which contain information about Apple's capacity. Finally, the Court GRANTS
2		Apple's motion with respect to the proposed redactions of capacity
3		data in Exh. 20. The Court DENIES Apple's motion with respect to
4		the rest of its proposed redactions to this exhibit, including the
5		information it seeks to seal regarding costs, profits, and margins.
6	Exhibit 3 to	GRANTED-IN-PART and DENIED-IN-PART. This exhibit is
7	Declaration of Joby	identical to part of the above exhibit, and therefore the Court's
8	Martin in Support of	ruling is the same: Apple's motion is GRANTED with respect to
9	Samsung's Daubert	the proposed redactions of paragraphs 127 and 133 and DENIED
10	Motion	with respect to all other proposed redactions, except the monetary
11		compensation information in paragraphs 170, and 172.
12	Exhibit Q to Mazza	GRANTED-IN-PART and DENIED-IN-PART. This exhibit
13	Declaration in	consists of excerpts from the previous exhibits, and therefore the
14	Support of Apple's	Court's ruling is the same: Apple's motion is GRANTED with
15	Opposition to	respect to the proposed redactions of paragraphs 127 and 133, and
16	Samsung's Daubert	DENIED with respect to all other proposed redactions.
17	Motion	
18	Exhibit 6 to Martin	DENIED. The information that Apple seeks to seal in this exhibit is
19	Declaration in	identical to information it has sought to seal above and therefore the
20	Support of	Court's ruling is the same: Apple seeks to seal cost, margin,
21	Samsung's Daubert	operating expenses, and operating profit information. As explained
22	Motion	above, this information will not be sealed.
23	Exhibit B to Musika	GRANTED-IN-PART and DENIED-IN-PART. This exhibit
24	Declaration in	consists of updated or supplemented versions of the above exhibits,
25	Support of Apple's	and therefore the Court's ruling is the same: Apple's motion is
26	Opposition to	GRANTED with respect to Apple's proposed redactions of Exs.
27	Samsung's Daubert	17.2-S, 26, and 27, all of which contain capacity data, as well as
28	Motion	Apple's proposed redactions to the capacity data in Exh. 20-S;
		Apple's motion is DENIED with respect to all other proposed
		redactions.
	Exhibit 1 to Martin	DENIED. The information that Apple seeks to seal in this exhibit is
	Declaration in	identical to information it has sought to seal above and therefore the
	Support of	Court's ruling is the same: Apple seeks to seal profit margin
	Samsung's Daubert	information. As explained above, this information will not be
	Motion	sealed.
	Exhibit C to Musika	DENIED. The information that Apple seeks to seal in this exhibit is
	Declaration in	identical to information it has sought to seal above and therefore the
	Support of Apple's	Court's ruling is the same: Apple seeks to seal cost, profit, margin,
	Opposition to	operating expenses, and operating profit information. As explained
	Samsung's Motion	above, this information will not be sealed.
	for Summary	
	Judgment	
	Exhibit E to Musika	DENIED. The information that Apple seeks to seal in this exhibit is
	Declaration in	identical to information it has sought to seal above and therefore the
	Support of Apple's	Court's ruling is the same: Apple seeks to seal costs, profits, profit
	Opposition to	margins, operating expenses, and operating profits information. As
	Samsung's Motion	explained above, this information will not be sealed.

1	for Summary Judgment	
2	Exhibit K to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	GRANTED-IN-PART and DENIED-IN-PART. The information that Apple seeks to seal in this exhibit is identical to information it has sought to seal above and therefore the Court's ruling is the same: Apple's motion is GRANTED with respect to the capacity information that it seeks to redact, but DENIED with respect to all other proposed redactions.
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5	Exhibit Y to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	DENIED. The information that Apple seeks to seal in this exhibit is identical to information it has sought to seal above and therefore the Court's ruling is the same: Apple seeks to seal cost estimates and margin information. As the Court has explained above, this information will not be sealed.
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9	Exhibit 10 to Martin Declaration in Support of Samsung's Daubert Motion	GRANTED. The information that Apple seeks to seal in this exhibit is identical to information it has sought to seal above and therefore the Court's ruling is the same: Apple seeks to seal capacity data, which is a protected trade secret and is therefore sealable, as explained above.
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11		
12	Exhibit Z to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	DENIED. The information that Apple seeks to seal in this exhibit is identical to information it has sought to seal above and therefore the Court's ruling is the same: Apple seeks to seal income and cost information. As the Court has explained above, this information will not be sealed.
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15	Exhibit 7 to Martin Declaration in Support of Samsung's Daubert Motion	DENIED. The information that Apple seeks to seal in this exhibit is identical to information it has sought to seal above and therefore the Court's ruling is the same: Apple seeks to seal costs, profits, margins, operating expenses, and operating profits information. As the Court has explained above, this information will not be sealed.
16		
17		
18	Samsung Reply in Support of Motion to Strike and Wagner Declaration in Support Thereof	GRANTED-IN-PART and DENIED-IN-PART. Although the Court has indicated that it will seal the financial terms of licensing agreements, Apple has over-designated the portions of this exhibit worthy of sealing. The Court GRANTS Apple's motion only with respect to the proposed redactions of the monetary compensation disclosed on pages 2-3 of the Reply, the proposed redactions on page 5 of the Reply, and the proposed redactions to paragraphs 23 and 26 of the attached Wagner Declaration. The Court DENIES Apple's motion with respect to all other proposed redactions.
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23	Exhibit B to Wagner Declaration in Support of Samsung's Reply in Support of Motion to Strike	GRANTED-IN-PART and DENIED-IN-PART. The Court GRANTS Apple's motion with respect to the proposed redactions of paragraphs 178-80, 188, and 193, all of which contain a discussion of supply constraints. Although not explicitly addressed earlier, disclosure of supply constraints presents the same risk of competitive harm as disclosure of capacity information and is of similarly minimal relevance to the underlying issues of the litigation.
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1		Additionally, the Court finds that compelling reasons exist for sealing information in paragraphs 397-98, 404, and 524, all of which contain payment details of Apple's acquisition of FingerWorks. Such information implicates the same considerations as the payment details of licensing agreements—namely that public disclosure of these details would disadvantage Apple in future acquisition negotiations. Apple has over-designated these paragraphs for sealing, however, so only portions of them will be sealed. In particular, the Court will not seal the first two sentences of paragraphs 397, but will seal the remainder of paragraphs 397-98. Additionally, the Court will seal only the monetary considerations contained in paragraphs 404 and 524 (Fig. 68), but DENIES Apple's motion as to the rest of paragraphs 404 and 524. The Court DENIES Apple's motion with respect to all other proposed redactions.
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10	Exhibit AA to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	DENIED. Apple seeks to exclude operating margin information. As explained above, this information will not be sealed.
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12		
13	Exhibit P1 to Hecht Declaration in Support of Samsung's Opposition to Apple's Motion for Partial Summary Judgment	GRANTED. Apple seeks to seal information relating to license royalty terms between Apple and various third parties.
14		
15		
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18	Exhibit 32 to Martin Declaration in Support of Samsung's Daubert Motion	GRANTED. Apple seeks to seal payment and royalty information for specific licensing agreements as well as pricing terms related to particular components in Apple products. Such information is trade secret under <i>Electronic Arts</i> . 298 Fed. App'x at 569 (finding "pricing terms, royalty rates, and guaranteed minimum payment terms" of a license agreement to "plainly fall[] within the definition of 'trade secrets'").
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22	Exhibit 67 to Arnold Declaration in Support of Samsung's Motion for Summary Judgment	DENIED. Apple seeks to redact information that only acknowledges the existence of various licensing agreements. As the Court has explained above, the mere existence of a licensing agreement is not a trade secret and therefore will not be sealed under the "compelling reasons" standard for dispositive motions.
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25	Exhibit A to Ordover Declaration in Support of apple's Opposition to Samsung's Motion for Summary	DENIED. Apple seeks to redact information reflecting only the scope of certain licensing agreements with third parties. As the Court has explained above, payment terms are the only sealable elements of licensing agreements under the "compelling reasons" standard. Accordingly information related to the scope of agreements, as opposed to compensation, will not be sealed.
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1	Judgment	
2	Exhibit C to Wagner Declaration in Support of Samsung's Reply in Support of Motion to Strike	DENIED. Apple seeks to redact information that only acknowledges the existence of various licensing agreements. As the Court has explained above, the mere existence of a licensing agreement is not a trade secret and therefore will not be sealed.
3	Exhibits 20 and 21 to Price Declaration in Support of Samsung's Reply in Support of Motion to Strike	GRANTED. Apple seeks to seal this document in its entirety as it consists entirely of capacity information, including capacity broken down by product, for 2010 and 2011. As explained above, capacity data meets the "compelling reasons" standard for sealing.
4	Exhibit 1 to Price Declaration in Support of Samsung's Reply in Support of Motion to Strike	GRANTED-IN-PART and DENIED-IN-PART. Apple seeks to seal this document in its entirety as it contains a notice of election pursuant to a licensing agreement between Apple and a third party that contains royalty information. The Court GRANTS Apple's motion to seal insofar as it implicates royalty information, but DENIES Apple's motion to seal the whole document as the Court sees no reason why Apple cannot redact only the sealable information.
5	Exhibits 2-6 & 13 to Price Declaration in Support of Samsung's Reply in Support of Motion to Strike	GRANTED. Apple seeks to seal licensing agreements between Apple and various third parties. Although the Court has already ruled that only payment information may be sealed in <i>summaries</i> of licensing agreements, the Court has not yet ruled on sealing motions related to the licensing agreements themselves. Such agreements contain a whole host of terms (e.g. termination conditions, side-agreements, waivers) that are irrelevant to matters in this litigation. Indeed, because the parties have prepared summary charts of all their license agreements for trial, the marginal value to the public of disclosing these entire agreements is low. Conversely, disclosure of these full documents could result in significant competitive harm to the licensing parties as it would provide insight into the structure of their licensing deals, forcing them into an uneven bargaining position in future negotiations. Accordingly, the Court finds that "compelling reasons" exist for sealing that outweigh the public's interest in accessing these documents used only in Samsung's motion to strike.

23

24 C. Samsung's Administrative Motion to Seal Trial Exhibits

25 Samsung moves to seal trial exhibits containing sensitive financial information, confidential
 26 source code, and future business plans, arguing that disclosure of such information would cause
 27 Samsung competitive harm. Samsung's Mot. to Seal Trial Exs. at 3-6. In particular, Samsung
 28 seeks to seal information pertaining product-specific profit and cost information, including sales

1 figures, manufacturing costs, operating expenses, operating profits, and gross margins. *Id.* at 4.
 2 Additionally, Samsung moves to seal an exhibit containing portions of its proprietary source code.
 3 Finally, Samsung moves that portions of exhibits containing future business plans—portions that
 4 will not be shown to the jury—neither be admitted into evidence nor entered into the public record.
 5 According to Samsung, disclosure of this information would cause substantial harm to its
 6 competitive standing. *Id.*

7 Having determined the general categories of financial data that may be sealed and having
 8 reviewed each of the documents that Samsung seeks to seal, the Court now applies these principles
 9 to the particular documents that Samsung has moved to seal. For the sake of efficiency, the Court
 10 presents its conclusions in the table below. All rulings are consistent with the rationale articulated
 11 above.

Trial Exhibit	Ruling
PX25	DENIED. Samsung seeks to seal confidential financial information related to Samsung’s per-product profit margins. As explained above, such information is not sealable under the “compelling reasons” standard.
PX27	DENIED. Samsung seeks to seal confidential financial information related to the premium built into Samsung’s pricing as well as its profit margin on particular phones. As explained above, such information is not sealable under the “compelling reasons” standard.
PX28	DENIED. Samsung seeks to seal confidential financial information related to costs incurred by Samsung during its manufacturing process as well as incremental and operating profit on particular phones. As explained above, such information is not sealable under the “compelling reasons” standard.
PX29	DENIED. Samsung seeks to seal information related to its costs incurred in manufacturing particular products, materials costs for those products, and Samsung’s profits and profit margins for each product. As explained above, such information is not sealable under the “compelling reasons” standard.
PX31	GRANTED. Samsung seeks to redact reproductions of its confidential source code. As explained above, such information readily qualifies as a “trade secret” under Ninth Circuit law, and therefore “compelling reasons” exist for sealing.
PX60	GRANTED-IN-PART and DENIED-IN-PART. Samsung seeks to seal confidential financial information as well as information about its future revenue projections and product strategy. Samsung’s sealing attempt is overbroad. The Court GRANTS Samsung’s motion with

	respect to information about future product strategy and future revenue projections, but DENIES it with respect to its past and current financial information. Because this adjudication is concerned with Samsung's past and current conduct, information related to Samsung's future is of limited value to the public. Moreover, such information has the potential to cause Samsung significant competitive harm.
PX180	DENIED. Samsung seeks to seal confidential financial information including a detailed breakdown of the costs incurred in manufacturing various products. As the Court has explained earlier, such information is not sealable under the "compelling reasons" standard.
PX183-185	DENIED as moot. Samsung requests only that the portions of these exhibits not shown to the jury and not admitted into evidence at trial be sealed. The parties are only required to make publicly available the documents (or parts thereof) that are admitted into evidence at trial and given to the jury. Accordingly, no motion is needed for the portions of documents that are not admitted into evidence at trial and not provided to the jury.
DX676	DENIED. Samsung seeks to seal confidential financial information including a detailed breakdown of the costs incurred in manufacturing various products. As the Court has explained earlier, such information is not sealable under the "compelling reasons" standard.

D. Samsung's Administrative Motion to Seal Prior Motions and Exhibits Thereto

Samsung moves to seal a number of exhibits from prior motions containing sensitive financial information, arguing that disclosure of such information would cause it competitive harm. In general, the financial information that Samsung seeks to seal is quite similar to the information that Apple had moved to seal, and accordingly the Court's rulings will be consistent: Samsung will be permitted to seal information related to its production capacity as well as payment terms of licensing agreements. In general, however, all other financial information will be made public, unless otherwise specified by the Court.

Additionally, Samsung moves to seal information disclosing its tax accounting procedures, particularly related to a tax treaty that allows Samsung to pay taxes in Korea on revenue from products sold in the United States. *See, e.g.*, Apple's Opp. to Samsung's Mots. in Limine at 28-29. While Samsung does not address this issue directly in its renewed motion to seal, it did address it briefly in a declaration filed in support of its original motion, arguing that "competitors would use Samsung's internal taxation strategies to structure their own financial and product plans in order to better compete with Samsung." ECF No. 1319 ¶ 14. This argument is both conclusory and unpersuasive. It is not clear how disclosure of information related to its tax treatment would place

1 Samsung at a competitive disadvantage. Moreover, Samsung's tax accounting procedures are
 2 relevant to understanding the apportionment of damages among the three defendants as well as the
 3 importance of Apple's inducement argument. Thus, the public has a significant interest in
 4 accessing this information. Accordingly, the Court finds that Samsung has not articulated a
 5 "compelling reason" for withholding information about its tax structure from the public and
 6 therefore such information is not sealable under Ninth Circuit law.

7 The following table contains rulings on each exhibit that Samsung moves to seal, consistent
 8 with the discussion and analysis provided above.

Exhibit	Ruling
Motion to Exclude Opinions of Certain of Apple's Experts	DENIED. Samsung seeks to exclude the amount of costs that Samsung incurred in making and selling the accused devices. As the Court has explained above, this information will not be sealed.
Exhibit 1 to Declaration of Joby Martin in Support of Samsung's Daubert Motion	DENIED. Samsung seeks to exclude information regarding Samsung's revenues, pricing, profit, and margins. As the Court has explained above, this information will not be sealed.
Exhibit 3 to Declaration of Joby Martin in Support of Samsung's Daubert Motion	DENIED. Samsung seeks to seal two classes of information: information related to proposed royalty rates for a licensing agreement between Apple and Samsung and confidential financial information, including revenues, profits, profit margins, costs, and tax rates. Although the Court has generally allowed royalty terms of licensing agreements to be sealed, Samsung is seeking to seal a <i>proposed</i> royalty rate <i>between the two litigants</i> . This information is important to the parties' damages calculations and therefore important for the public's understanding of this case. Moreover, this litigation will end up publically placing a value on the two companies' patent portfolios, so the argument that prior proposed royalty rates will harm future negotiations is unpersuasive. Additionally, the Court has already explained that financial information will not be sealed under the "compelling reasons" standard.
Exhibit 5 to Declaration of Joby Martin in Support of Samsung's Daubert Motion	DENIED. Samsung seeks to seal revenue, cost, profit, and profit margin information. <i>See</i> ¶¶ 14, 32, 40 (revenues, costs, profits, and profit margins). The Court has found that compelling reasons do not exist for sealing such information.
Exhibit 2 to Declaration of Joby Martin in Support of Samsung's Daubert	DENIED. Samsung seeks to seal cost and profit information. The Court has found that compelling reasons do not exist for sealing such information.

1	Motion	
2	Exhibit F to Musika	DENIED. Samsung seeks to seal profit, revenue, and cost
3	Declaration in	information. The Court has found that compelling reasons do not
4	Support of Apple's	exist for sealing such information.
5	Opposition to	
6	Samsung's Motion	
7	for Summary	
8	Judgment	
9	Exhibit G to Musika	DENIED. Samsung seeks to seal profit, revenue, and cost
10	Declaration in	information. The Court has found that compelling reasons do not
11	Support of Apple's	exist for sealing such information.
12	Opposition to	
13	Samsung's Motion	
14	for Summary	
15	Judgment	
16	Exhibit O to	DENIED. Samsung seeks to seal cost information. The Court has
17	Maharbiz	found that compelling reasons do not exist for sealing such
18	Declaration in	information.
19	Support of Apple's	
20	Opposition to	
21	Samsung's Motion	
22	for Summary	
23	Judgment	
24	Exhibit 37 to	DENIED. Samsung seeks to seal cost information. The Court has
25	Bressler Declaration	found that compelling reasons do not exist for sealing such
26	in Support of	information.
27	Apple's Opposition	
28	to Samsung's	
	Motion for	
	Summary Judgment	
	Exhibit B to Wagner	DENIED. Samsung seeks to seal cost, profit, unit sales, revenue,
	Declaration in	and tax arrangement information. The Court has found that
	Support of	compelling reasons do not exist for sealing such information.
	Samsung's Reply in	
	Support of	
	Samsung's Daubert	
	Motion	
	Apple's Oppositions	DENIED. Samsung seeks to seal profit, cost, and tax arrangement
	to Samsung's	information. The Court has found that compelling reasons do not
	Motions in Limine	exist for sealing such information.
	Exhibit 42 to	DENIED. Samsung seeks to seal profit information. The Court has
	Kanada Declaration	found that compelling reasons do not exist for sealing such
	in Support of	information.
	Apple's Oppositions	
	to Samsung's	
	Motions in Limine	
	Exhibit 43 to	DENIED. Samsung seeks to seal profit margin information. The
	Kanada Declaration	Court has found that compelling reasons do not exist for sealing

1 2 3 4 5 6 7 8 9	in Support of Apple's Oppositions to Samsung's Motions in Limine	such information.
10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Exhibit 44 to Kanada Declaration in Support of Apple's Oppositions to Samsung's Motions in Limine	DENIED. Samsung seeks to seal unit sales and profit margin information. The Court has found that compelling reasons do not exist for sealing such information.
	Exhibit 10 to Declaration of Joby Martin in Support of Samsung's Daubert Motion	GRANTED-IN-PART and DENIED-IN-PART. The Court GRANTS Samsung's motion to seal capacity information, but DENIES it with respect to the rest of the proposed redactions (including redactions of profit and revenue information).

III. Third Party Sealing Motions

In addition to the litigants, a number of third parties to this case have also filed administrative motions to seal. The overwhelming majority of these third party filings seek to seal the financial terms of licensing agreements entered into with one of the litigants. As the Ninth Circuit held in *In re Electronic Arts*, “pricing terms, royalty rates, and guaranteed minimum payment terms” plainly fall within the definition of “trade secrets” for purposes of sealing motions. 298 Fed. App'x at 569. Moreover, the *Electronic Arts* court adopted the definition of “trade secret” propounded by the Restatement of Torts as something “consisting of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *Id.* (citing *Restatement of Torts* § 757, cmt. b). Accordingly, the Court will seal all information related to licensing agreements' pricing terms, royalty rates, and payments. The public release of such information would place these third-parties in a weakened bargaining position in future negotiations, thereby giving their customers and competitors a significant advantage. This is true of all licensing agreements sought to be sealed by the parties, including those agreements that have already expired. Indeed, parties seeking to seal the financial terms of expired licensing agreements have argued persuasively that the financial terms of such agreements are probative of the terms of current licensing deals—in fact, many current licensing deals cover technologies previously

1 licensed in agreements that have since expired. Accordingly, disclosure of expired licensing
2 agreements' pricing would lead to the same competitive harms as disclosure of current licensing
3 agreements' pricing. All other licensing information, however, including the technologies being
4 licensed, will not be sealed. No party has articulated how disclosure of this non-financial
5 information will result in future harm; accordingly, no party has met the burden of providing a
6 "compelling reason" to withhold this information from the public.

7 The bulk of the third party sealing motions are directed towards two trial exhibits: PX77
8 and DX630. Both of these exhibits contain charts summarizing licensing agreements between the
9 litigants and third parties. PX77 organizes this licensing agreement information into columns
10 labeled "[Apple or Samsung] License Partner"; "Bates Range"; "Effective Date"; "Expiration
11 Date"; "Term of Agreement"; "Monetary Consideration"; "Includes Rights to UMTS-Related
12 Patents?"; "Includes Rights to Other Patents?"; and "Cross License?". DX630 organizes this
13 information into columns labeled "Licensee"; "Licensor"; "Title"; "Effective Date"; "Date Last
14 Signed"; "Term"; "Licensed Products/Technology"; "Geographic Scope"; "Payments"; and
15 "Source." Consistent with *Electronic Arts*, the Court will grant motions to seal information in the
16 "Monetary Consideration" column of the PX77 summary and the "Payments" column of the
17 DX630 summary. The Court will deny motions to seal information in other columns of either
18 summary. 298 Fed. App'x at 569 ("[P]ricing terms, royalty rates, and guaranteed minimum
19 payment terms . . . plainly fall[] within the definition of 'trade secrets.'").

20 Although both PX77 and DX630 are Rule 1006 summaries, some of the third parties have
21 also moved to redact substantial portions of the underlying license agreements on which these trial
22 exhibits are based. Because these exhibits are summaries, however, the underlying documents,
23 while admissible, are not being admitted into evidence themselves. Therefore, requests by third
24 parties to seal the actual licensing agreements summarized in PX77 and DX630 are DENIED as
25 moot.

26 Additionally, this Court has already ruled that "the whole trial is going to be open." Order
27 Den. Sealing Mot. 3, ECF No. 1256 (citation omitted). Accordingly, all motions to seal the
28 courtroom during trial or to seal portions of the trial transcript are hereby DENIED.

1 The Court briefly notes that the parties have submitted a Joint Stipulation that the parties
2 argue obviates the need for the Court's rulings on third party sealing motions. *See* ECF No. 1597
3 at 2. In particular, the parties have agreed to substitute "neutral, non-identifying designations (such
4 as 'Party A') for all third parties identified in [] licensing agreements, summaries or charts to the
5 extent such third parties will not be the subject of testimony." *Id.* Research in Motion ("RIM")
6 filed an objection to the parties' stipulation as it relates to third party licensing terms. ECF No.
7 1613. As Research in Motion points out, the stipulation would effectively permit disclosure of the
8 identity and the terms of the licensing agreements. This is because "RIM (as with all other
9 nonparties) has already filed a redacted version of Trial Exhibit 630, identifying RIM, with the
10 Court. Dkt. 1396-1. It would be simple for one of RIM's competitors to match the non-redacted
11 portions of the exhibit filed by RIM with the information that would be supplied by Trial Exhibit
12 630 pursuant to the Stipulation, and thereby gain access to the very information that RIM (and all
13 other nonparties) sought to protect." ECF No. 1613 at 1. Unfortunately, the parties' solution to
14 this issue is tardy, and does not resolve the issue of balancing the competing interests. Therefore,
15 the parties' stipulation as to the third party licensing agreements is DENIED. The Court issues the
16 following rulings as to the third party requests to seal.

17 A. Nokia's Motion to Seal

18 Nokia moves to seal information contained in licensing agreement summaries in two trial
19 exhibits: PX77 and DX630. In particular, Nokia moves to seal information contained in the
20 Expiration Date, Term of Agreement, and Monetary Considerations columns of the summary
21 contained in PX77 as well as the Term, Licensed Products/Technology, and Payments columns of
22 DX630. Consistent with the principles articulated above, the Court GRANTS Nokia's motion with
23 regards to the "Monetary Considerations" column of the summary contained in PX77 as well as the
24 "Payments" column of DX630 and DENIES Nokia's motion in all other respects.

25 B. Interdigital's Motion to Seal

26 Interdigital moves to seal portions of a licensing agreement between Interdigital and
27 Samsung as well as information relating to an Apple/Interdigital licensing agreement contained in
28 the DX630 licensing agreement summary. Interdigital does not seek to seal any summary

1 information of the Interdigital/Samsung agreement contained in either PX77 or DX630. Consistent
2 with the principles articulated above, the Court GRANTS Interdigital's motion with respect to the
3 information in the "Payments" column of DX630 concerning the Apple/Interdigital agreement
4 only. The Court DENIES Interdigital's motion with respect to information in the "Licensed
5 Products/Technology" column of DX630 concerning the Apple/Interdigital agreement and
6 DENIES Interdigital's motion to seal the Samsung/Interdigital licensing agreement as moot, since
7 the licensing agreements underlying PX77 and DX630 are not being admitted into evidence.
8 Accordingly, Interdigital's motion to seal is GRANTED-IN-PART and DENIED-IN-PART.

9 C. Koninklijke Philips Electronics' Motion to Seal

10 Philips moves to seal information contained in the "Payments" columns of trial exhibit
11 DX630. Consistent with the principles articulated above, the Court GRANTS Philips' motion.

12 D. IBM's Motion to Seal

13 IBM moves to seal only the payment amounts contained in the "Payments" column of trial
14 exhibit DX630. Although third-party Reuters argues that IBM's motion is moot because IBM
15 served its licensing agreement as an exhibit to IBM's motion to seal on all parties and intervenors,
16 including Reuters, such a limited disclosure does not strip IBM's information of its "trade secret"
17 status. To the Court's knowledge, none of the information that IBM seeks to seek has been
18 disclosed to the *public*, and therefore IBM's motion is not moot.

19 Reuters has threatened to publish IBM's licensing agreement, but to the Court's knowledge
20 such publication has not yet occurred. IBM was unsuccessful in its attempt to secure a TRO from
21 Judge Grewal enjoining Reuters from publishing this information. However, IBM served its
22 licensing agreement on Reuters because Reuters is now a party to the suit, having prevailed on its
23 motion to intervene. As a party to the suit, Reuters is governed by the Protective Order. *See* ECF
24 687 (stating that a "[p]arty" for purposes of the Protective Order "means *any party* to this case,
25 including all of its officers, directors, employees, consultants, retained experts, and outside counsel
26 and their support staffs) (emphasis added). Accordingly, if Reuters does publish this information,
27 it will be in direct violation of this Protective Order. Consistent with the principles articulated
28 above, the Court GRANTS IBM's motion.

1 E. Toshiba's Motion to Seal

2 Toshiba moves to seal information contained in the "Term," "Licensed
3 Products/Technology," and "Payments" columns of trial exhibit DX630. Consistent with the
4 principles articulated above, the Court GRANTS Toshiba's motions with respect to the information
5 contained in the "Payments" column, but DENIES it with respect to the information contained in
6 the "Licensed Products/Technology" and "Term" columns. Accordingly, Toshiba's motion to seal
7 is GRANTED-IN-PART and DENIED-IN-PART.

8 F. Microsoft's Motion to Seal

9 Microsoft moves to seal information contained in the "Effective Date," "Date Last Signed,"
10 "Term," "Licensed Products/Technology," "Geographic Scope," and "Payments" columns of trial
11 exhibit DX630. Consistent with the principles articulated above, the Court GRANTS Microsoft's
12 motion with respect to the information contained in the "Payments" column, but DENIES it with
13 respect to the information contained in the "Effective Date," "Date Last Signed," "Term"
14 "Licensed Products/Technology," and "Geographic Scope," columns. Accordingly, Microsoft's
15 motion to seal is GRANTED-IN-PART and DENIED-IN-PART.

16 G. Qualcomm's Motion to Seal

17 Qualcomm moves to seal information contained in the "Term" and "Payments" columns of
18 trial exhibit DX630. Ordinarily, the Court would grant Qualcomm's motion, based on the rationale
19 articulated above. In this case, however, Qualcomm has already made this information public by
20 inadvertently posting it in un-redacted form on ECF. Although the Court understands that this
21 public disclosure was unintentional, it nevertheless finds that the information that Qualcomm seeks
22 to redact is no longer "secret," and therefore no longer qualifies for protection as a "trade secret."
23 *See Restatement of Torts* § 757, cmt. b ("The subject matter of a trade secret must be secret."); *see*
24 *also Electronic Arts*, 298 Fed. App'x at 569-70 (adopting the Restatement's definition of "trade
25 secret").

26 Qualcomm contends that because it locked, as soon as possible, the incorrectly filed
27 document, thereby removing it from public access, the information it seeks to seal is still worthy of
28 sealing protection. Moreover, Qualcomm argues that "secret" is not a binary determination, but

1 rather a sliding scale. As Qualcomm notes, however, Reuters has already published a story
2 containing the information that Qualcomm now seeks to seal. Nevertheless, the public's interest in
3 permanent and continuing access to the royalty payment terms of Qualcomm's licensing agreement
4 from the official court records remains low, as the PX77 and DX630 summaries contain the
5 licensing information upon which the parties will rely at trial.

6 Moreover, the very fact that Qualcomm still seeks to maintain this royalty payment
7 information under seal, even after it has been briefly disclosed, indicates that Qualcomm still does
8 gain some competitive advantage from limiting disclosure of this information. *See Electronic Arts*,
9 298 Fed. App'x at 569-70 (quoting *Restatement of Torts* § 757, cmt. b). As Qualcomm explains, a
10 future licensing partner is far more likely to discover this information if it is published in the
11 official court records than if it is only published by Reuters. Thus, limiting further public
12 disclosure would help prevent further competitive harm to Qualcomm. Accordingly, the Court
13 finds that compelling reasons exist for sealing this information and therefore GRANTS
14 Qualcomm's motion to seal.

15 H. Research in Motion's Motion to Seal

16 Research in Motion moves to seal information contained in the "Term," "Licensed
17 Products/Technology," and "Payments" columns of trial exhibit DX630. Consistent with the
18 principles articulated above, the Court GRANTS Research in Motion's motion with respect to the
19 information contained in the "Payments" column, but DENIES it with respect to the information
20 contained in the "Licensed Products/Technology" and "Term" columns. Thus, Research in
21 Motion's motion to seal is GRANTED-IN-PART and DENIED-IN-PART.

22 I. Motorola Mobility's Motion to Seal

23 Motorola Mobility moves to seal information contained in the "Monetary Consideration,"
24 "Includes Rights to UMTS-Related Patents?," "Includes Rights to Other Patents?," and "Cross
25 License?" columns of trial exhibit PX77 as well as the "Licensed Products/Technology" and
26 "Payments" columns of trial exhibit DX630. Additionally, Motorola Mobility also moves to seal
27 portions of trial exhibit DX631, which contains tables summarizing rate, revenue, and royalty
28 information. Finally, Motorola Mobility also moves to seal portions of PX82, a Samsung licensing

1 presentation containing proposed terms and conditions of a Samsung-Motorola license, forecasts of
2 Motorola sales, and proposed royalty rates and payments for the Samsung-Motorola agreement.
3 Consistent with the principles articulated above, the Court GRANTS Motorola's motion with
4 respect to the proposed redactions of information contained in the "Monetary Consideration"
5 column of PX77, information contained in the "Payment" column of DX630, information
6 contained in DX631, and information contained in PX82. However, the Court DENIES Motorola
7 Mobility's motion with respect to the information contained in the other columns of PX77 and
8 DX630. Thus, Motorola Mobility's motion is GRANTED-IN-PART and DENIED-IN-PART.

9 J. Intel's Motion to Seal

10 Intel moves to seal Intel source code, the Intel X-GOLD 61x Product Specification, the
11 Intel UMTS RLC Detailed Design Description, and Exhibits 4 and 7 to the Selwyn Declaration in
12 Support of Apple's Motion for Summary Judgment (ECF No. 925) which describe Intel's
13 scrambling code circuitry. Additionally, Intel moves that the parties be required to use redacted
14 versions of the Samsung-Intel cross-license agreement (and amendments) and Intel invoices to
15 Apple.

16 Intel argues that the source code, Product Specification, and Detailed Design Description all
17 constitute trade secrets. That Intel's source code is a trade secret, and therefore sealable, is clear.
18 *See Agency Solutions.Com*, 819 F. Supp. 2d at 1017 ("[S]ource code is undoubtedly[sic] a trade
19 secret."). Similarly, the Product Specification, which provides a complete specification of the X-
20 GOLD 61x system and specifies the algorithms used by each constituent module; and the Detailed
21 Design Description, which identifies the functions, input and output variables, and data structures
22 used by each module, are also trade secrets. Accordingly all three are sealable under Ninth Circuit
23 law, so the Court GRANTS Intel's motions with respect to these documents. *See Kamakana*, 447
24 F.3d at 1179.

25 Additionally, Intel argues that Exhibits 4 and 7 of the Selwyn Declaration should be sealed,
26 as they provide a detailed analysis of Intel's source code and circuitry. Additionally, Intel notes
27 that when this Court granted Apple's summary judgment motion on non-infringement, it did so on
28 the basis of claim construction and the application of those claims to the 3GPP TS 25.213 standard.

1 The Court did not rely on Intel’s source code, circuitry, or any expert analysis thereof.
2 Accordingly, Intel argues, even though summary judgment is dispositive, the public’s interest in
3 these particular documents is relatively low. The Court agrees with Intel. Source code and
4 circuitry do constitute trade secrets, and the Court has a duty to prevent court documents from
5 being used “as sources of business information that might harm [Intel’s] competitive standing.”
6 *See In re Electronic Arts*, 298 Fed. App’x at 569 (citing *Nixon*, 435 U.S. at 598). Thus the Court
7 GRANTS Intel’s motion with respect to these documents.

8 Finally, Intel argues that the parties should be required to use redacted versions of an Intel-
9 Samsung cross-licensing agreement and an Intel invoice to Apple if they choose to introduce such
10 evidence at trial. Intel argues that this agreement and invoice are relevant only to Apple’s
11 exhaustion defense, and that the terms it proposes to redact are not necessary to understanding this
12 defense. In particular, Intel argues that it seeks to redact commercially sensitive provisions of the
13 cross-licensing agreement and pricing information on the invoice. Intel points out that Samsung
14 used a redacted version of this same licensing agreement in open court in a related Korean
15 litigation. Accordingly, Intel argues that the public’s interest in seeing the redacted portions of
16 these documents is low, while its interest in maintaining confidentiality over commercially
17 sensitive information is high.

18 Consistent with the Court’s earlier analysis, Intel’s motion is GRANTED with respect to
19 the payment terms of the licensing agreement only, and denied as to the rest of the licensing
20 agreement. However, the Court hopes that Intel can reach an agreement with the parties to use a
21 redacted version of the licensing agreement in this trial, similar to the agreement reached in the
22 Korean litigation.

23 K. Dolby Laboratories’ Motion to Seal

24 Dolby moves to seal information contained in the “Payments” column of trial exhibit
25 DX630. Consistent with the principles articulated above, the Court GRANTS Dolby’s motion.

26 L. Siemens AG’s Motion to Seal

27 Siemens moves to seal information contained in the “Expiration Date,” “Term of
28 Agreement,” and “Monetary Consideration” columns of trial exhibit PX77. Consistent with the


1 principles articulated above, the Court GRANTS Siemens's motion with regards to the information
2 in the "Monetary Consideration" column only, and DENIES it with regards to the information in
3 the "Expiration Date" and "Term of Agreement Columns."

4 M. Telefonaktiebolaget LM Ericsson's Motion to Seal

5 Ericsson moves to seal information contained in the "Expiration Date," "Term of
6 Agreement," and "Monetary Consideration" columns of trial exhibit PX77, and the "Term,"
7 "Licensed Products/Technology," "Geographic Scope," and "Payments" columns of trial exhibit
8 DX630. Additionally, Ericsson also moves to seal portions of trial exhibit DX631, which contains
9 tables summarizing royalty rates, revenue, royalty, and rate information. Consistent with the
10 principles articulated above, the Court GRANTS Ericsson's motion with respect to the information
11 in the "Monetary Consideration" column of PX77, the information in the "Payments" column of
12 DX630, and the information it seeks to redact in DX631. The Court DENIES the remainder of
13 Ericsson's motion. Thus, Ericsson's motion is GRANTED-IN-PART and DENIED-IN-PART.

14
15 **IT IS SO ORDERED.**

16 Dated: August 9, 2012



17 LUCY H. KOH
18 United States District Judge

EXHIBIT 7

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Attorneys for Plaintiff and
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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

13 APPLE INC., a California corporation,
 14 Plaintiff,
 15 vs.

Civil Action No. 11-CV-01846-LHK

16 SAMSUNG ELECTRONICS CO., LTD., a
 Korean business entity, SAMSUNG
 17 ELECTRONICS AMERICA, INC., a New
 York corporation, and SAMSUNG
 18 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 19 Defendants.

NOTICE OF APPEAL

20 SAMSUNG ELECTRONICS CO., LTD., a
 Korean business entity, SAMSUNG
 21 ELECTRONICS AMERICA, INC., a New
 York corporation, and SAMSUNG
 22 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 23 Counterclaim-Plaintiffs,
 24 v.

25 APPLE INC., a California corporation,
 26 Counterclaim-Defendant.

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NOTICE IS HEREBY GIVEN that Plaintiff Apple Inc. hereby appeals to the United States Court of Appeals for the Federal Circuit from the Order Granting-in-Part and Denying-In-Part Motions to Seal entered in this action on August 9, 2012 (Dkt. 1649) and the July 17, 2012 Order Denying Sealing Motions (Dkt. 1245).

Dated: August 13, 2012

WILMER CUTLER PICKERING
HALE AND DORR LLP

By: /s/ William F. Lee
William F. Lee

Attorneys for Plaintiff
APPLE INC.

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CERTIFICATE OF SERVICE BY ELECTRONIC SERVICE
[Code Civ. Proc sec. 1010.6]

I declare that I am employed with the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, whose address is 950 Page Mill Road, Palo Alto, California 94304. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on August 13, 2012, I served a copy of:

NOTICE OF APPEAL

Via the Court’s CM/ECF system per Civil Local Rule 5.4, as well as by electronically mailing a true and correct copy through Wilmer Cutler Pickering Hale and Dorr LLP’S electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6.

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I declare under penalty of perjury that the foregoing is true and correct. Executed at Palo Alto, California on August 13, 2012.

/s/ Mark D. Selwyn
Mark D. Selwyn

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
Appeal Information Sheet

United States District Court for the Northern District of California

APPLE INC. -v- SAMSUNG ELECTRONICS CO. LTD. ET AL
Plaintiff(s) Defendant(s)

(List all parties. Use asterisk to indicate dismissed or withdrawn parties. Use separate sheet if needed. Explain any discrepancy with caption used on judgment, order or opinion.)

Type of case: Trademark Infringement

Docket No. CV 11-01846 LHK Date of Judgment/Order: **07/17/12, 08/09/2012**

Cross or related appeal? Date of Notice of Appeal: **08/13/2012**

Appellant is: Plaintiff Defendant Other (explain)

DOCKET FEE STATUS:

Paid Not Paid Billed On:

U.S. Appeal? Yes No

In forma pauperis?

Granted Denied Revoked Pending Never requested

COUNSEL

(List name, firm, address and telephone of lead counsel for each party. Indicate party represented.)

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IMPORTANT: Attach copy of opinion or order appealed from. Forward together with copy of notice of appeal and certified docket entries.

1 C11-1846 LHK Apple Inc. -v- Samsung Electronics Co. Ltd., et al

2 **Plaintiff, Counter-Defendant and**
3 **Counter-Claimant**

4 **Apple Inc.**
5 *a California corporation*

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

14 APPLE INC., a California corporation,
 Plaintiff,

15 vs.

16 SAMSUNG ELECTRONICS CO., LTD., a
 Korean business entity, SAMSUNG
 17 ELECTRONICS AMERICA, INC., a New
 York corporation, and SAMSUNG
 18 TELECOMMUNICATIONS AMERICA,
 LLC, a Delaware limited liability company,
 Defendants.

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

22 Counterclaim-Plaintiffs,

23 v.

24 APPLE INC., a California corporation,
 Counterclaim-Defendant.

Civil Action No. 11-CV-01846-LHK

25
 26 **APPLE INC.'S MOTION TO STAY**
ORDER DENYING-IN-PART MOTIONS
TO SEAL

1 Plaintiff Apple Inc. (“Apple”) respectfully requests that the Court stay its Order
 2 Granting-in-Part and Denying-in-Part Motions to Seal (Dkt. No. 1649) (“Order”) insofar as it
 3 applies to Apple’s confidential financial data and Apple’s confidential and proprietary market
 4 research reports so as to permit Apple to appeal the order to the United States Court of Appeals
 5 for the Federal Circuit.

6 A stay of this Court’s order denying Apple’s motion to seal Apple’s confidential financial
 7 and market survey data—all highly-guarded trade secrets—is essential to Apple obtaining the
 8 relief requested in its appeal. Absent a stay, Apple’s trade secret information would forever be
 9 made public, rendering the issues raised by Apple’s appeal moot before the Federal Circuit ever
 10 has an opportunity to consider them on the merits.

11 **I. BACKGROUND**

12 On August 9, 2012, the Court entered its order granting-in-part and denying-in-part the
 13 parties’ and third parties’ motions to seal. (*See* Dkt. No. 1649.) Pursuant to that order, the Court
 14 declined to seal (among other things) certain Apple confidential financial data and certain
 15 confidential and proprietary Apple market research reports. (*See id.* at 5-9, 12-16.)

16 Today, Apple will file a notice of appeal to the United States Court of Appeals for the
 17 Federal Circuit in order to appeal these determinations. Specifically, Apple will appeal this
 18 Court’s determinations that the following documents are not properly sealed:

Document
Ex. A to Musika Declaration in Support of Apple’s Daubert Opposition
Ex. 3 to Martin Declaration in Support of Samsung’s Daubert Motion
Ex. Q to Mazza Declaration in Support of Apple’s Daubert Opposition
Ex. 6 to Martin Declaration in Support of Samsung’s Daubert Motion
Ex. B to Musika Declaration in Support of Apple’s Daubert Opposition
Ex. 1 to Martin Declaration in Support of Samsung Daubert Motion
Ex. C to Musika Declaration in Support of Apple’s MSJ Opposition
Ex. E to Musika Declaration in Support of Apple’s MSJ Opposition

1	Ex. K to Musika Declaration in Support of Apple's Daubert Opposition
2	Ex. Y to Musika Declaration in Support of Apple's Daubert Opposition
3	Ex. Z to Musika Declaration in Support of Apple's Daubert Opposition
4	Ex. 7 to Martin Declaration in Support of Samsung's Daubert Motion
5	Ex. B to Wagner Declaration in Support of Samsung's Reply in Support of Motion to Strike
6	Ex. AA to Musika Declaration in Support of Apple's Daubert Opposition

7 Depending on what exhibits the Court admits in the coming trial days, Apple may also appeal
8 additional sealing determinations.

9 **II. ARGUMENT**

10 **A. THE COURT SHOULD STAY ITS ORDER PENDING APPEAL**

11 The Court should consider four factors when determining whether to stay its order
12 pending appeal: "likelihood of success, irreparable injury, balance of hardships, and the public
13 interest." *E.g., Alarcon v. Shim, Inc.*, No. C-07-02894-SI, 2007 WL 4287336, at *3 (N.D. Cal.
14 Dec. 5, 2007); *see also In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent*
15 *Litig.*, 449 Fed. App'x 35, 36 (Fed. Cir. 2011) (nonprecedential) ("[The Federal Circuit] balances
16 four factors when determining whether to stay a district court's order pending appeal: (1)
17 whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
18 (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the
19 stay will substantially injure the other parties interested in the proceeding; and (4) where the
20 public interest lies.") (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *Standard Havens*
Prods., Inc. v. Gencor Indus., Inc., 897 F.2d 511, 512 (Fed. Cir. 1990) (reciting factors).

21 No single factor is dispositive, but the first two "are the most critical." *Cyclobenzaprine*,
22 449 Fed. App'x at 36; *Standard Havens*, 897 F.2d at 513 ("When harm to applicant is great
23 enough, a court will not require 'a strong showing' that applicant is 'likely to succeed on the
24 merits.'" (quoting *Hilton*, 481 U.S. at 776)).

1 **1. APPLE WILL BE IRREPARABLY HARMED ABSENT A STAY.**

2 The disclosure of the materials that are the subject of Apple’s appeal—Apple’s most
3 sensitive financial and market research information—would irreparably harm Apple. Those
4 documents would provide Apple’s competitors an unprecedented business advantage, allowing
5 them access to cost, sales, and market research data that are not widely available even within
6 Apple. *See Am. Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 741 (Fed. Cir. 1987) (recognizing
7 harms of disclosure of confidential business information to competitors and collecting cases); *cf.*
8 *In re Sarkar*, 575 F.2d 870, 872 (C.C.P.A. 1978) (“[W]herever possible, trade secret law and
9 patent law should be administered in such manner that the former will not deter an inventor from
10 seeking the benefit of the latter[.]” (citing *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470
11 (1974))). In fact, the logic of the Court’s order makes clear that Apple’s competitors could
12 predict Apple’s future product releases and marketing campaigns using certain of the
13 confidential survey information that the Court has ordered unsealed. As the Court has explained,
14 “it stands to reason that [Apple’s] competitors may infer the most significant results [of its
15 market research] by simply observing Apple’s product releases and marketing campaigns.”
16 (Order at 9.) The converse is also true: equipped with Apple’s market research, Apple’s
17 competitors could predict Apple’s product releases and marketing campaigns—putting Apple at
18 an irreparable competitive disadvantage.

19 Absent a stay, these harms cannot be undone. As the Third Circuit has aptly stated, “a
20 trade secret which, once disclosed, is lost.” *Republic of Philippines v. Westinghouse Elec. Corp.*,
21 949 F.2d 653, 663 (3d Cir. 1991). Once made public, no corrective measures can restore the
22 confidentiality of these materials—even if the Federal Circuit ultimately determines that this
23 Court was incorrect to order them unsealed. Given the speed at which information propagates
24 and duplicates in the digital age, even momentary public access to this information will allow it
25 to reside in perpetuity within the public domain. Those concerns are particularly acute here,
26 given the close media attention to this case. *See also* Order at 6 (“[T]his trial is especially
unusual in the extraordinary public interest it has generated”). To avoid these immediate and

1 irreparable harms, a stay of this Court’s order is necessary even to permit the Federal Circuit to
2 consider the merits of Apple’s appeal.

3 **2. THE THREE OTHER FACTORS ALSO SUPPORT A STAY.**

4 a) **Apple Is Likely To Succeed On The Merits.**

5 Respectfully, the Court’s decision to unseal Apple’s highly sensitive financial
6 information and market research was an abuse of discretion. The documents the Court ordered
7 unsealed contain the company’s most highly guarded trade secrets—to which few even within
8 Apple have access. Much of this information is only peripherally relevant to the issues at trial,
9 and unsealing it therefore would do little or nothing to aid the public’s understanding of the
10 judicial process. Because there are compelling reasons for maintaining the confidentiality of this
11 information, and because they substantially outweigh any interest the public may have in their
12 disclosure, Apple expects to succeed on the merits on appeal.

13 b) **A Stay Will Not Injure Any Entity Interested In These**
14 **Proceedings.**

15 A stay of this Court’s order unsealing Apple’s confidential documents will not injure
16 anyone interested in these proceedings, including the public. A stay merely would merely
17 maintain the status quo for the brief period necessary to permit full consideration of Apple’s
18 appeal. *Nken v. Holder*, 556 U.S. 418, 429 (2009) (“A stay ‘simply suspend[s] judicial alteration
19 of the status quo[.]’” (first alteration in original) (quoting *Ohio Citizens for Responsible Energy,*
20 *Inc. v. NRC*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers))). If the Federal Circuit
21 ultimately rejects Apple’s petition, the public and the media will be in the same position as they
22 would have been absent a stay.

23 c) **A Stay Serves The Public Interest.**

24 The public has a strong interest in ensuring that litigants, like Apple, have a full and fair
25 opportunity to obtain judicial relief. *Prometheus Radio Project v. FCC*, No. 03-3388, 2003 WL
26

1 22052896, at *1 (3d Cir. Sept. 3, 2003) (nonprecedential) (citing “the public’s interest in
2 reaching the proper resolution” as reason to stay “pending thorough and efficient judicial
3 review”). Absent a stay, the Federal Circuit could not reach the merits of Apple’s petition before
4 those issues are rendered moot through the public disclosure of Apple’s confidential information.
5 Thus, a stay pending a final resolution of Apple’s appeal is necessary to promote the public’s
6 interest in providing a forum that can provide effective relief, and in ensuring meaningful review
7 of district court determinations.

8 A stay would also promote the public’s interest in protecting patentees’ legitimate
9 confidentiality interests. To avoid a chilling effect on the enforcement of patent rights, patentees
10 need confidence that the enforcement of their patents will not sacrifice the confidentiality of their
11 most sensitive business information. A stay would ameliorate those concerns by providing the
12 opportunity for review by the Federal Circuit prior to any such disclosure.

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III. CONCLUSION

For the foregoing reasons, Apple respectfully requests that the Court stay its Order Granting-in-Part and Denying-in-Part Motions to Seal (Dkt. No. 1649) pending appeal, insofar as it applies to Apple’s confidential financial data and Apple’s confidential and proprietary market research reports.

Dated: August 13, 2012

WILMER CUTLER PICKERING
HALE AND DORR LLP

By: /s/ Mark D. Selwyn
Mark D. Selwyn

Attorneys for Plaintiff
APPLE INC.

MORRISON & FOERSTER LLP

By: /s/ Michael A. Jacobs
Michael A. Jacobs

Attorneys for Plaintiff
APPLE INC.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on August 13, 2012 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4.

/s/ Mark D. Selwyn _____
Mark D. Selwyn

EXHIBIT 9

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE, INC., a California corporation,	)	Case No.: 11-CV-01846-LHK
)	
Plaintiff,	)	ORDER GRANTING IN PART AND
v.	)	DENYING IN PART THE PARTIES’
	)	MOTIONS TO STAY PENDING
SAMSUNG ELECTRONICS CO., LTD., A	)	APPEAL
Korean corporation; SAMSUNG)	
ELECTRONICS AMERICA, INC., a New York)	
corporation; SAMSUNG)	
TELECOMMUNICATIONS AMERICA, LLC,)	
a Delaware limited liability company,)	
)	
Defendants.)	

This Court issued an Order Granting-in-Part and Denying-in-Part Motions to Seal. ECF No. 1649. Apple has filed an appeal with the Federal Circuit, appealing the portions of the Order that denied Apple’s request to seal “confidential financial data” and “confidential and proprietary market research reports.” Apple’s Mot. to Stay, ECF No. 1696. Apple appeals this Court’s ruling with respect to documents filed in support of Apple’s *Daubert* and summary judgment motions, as well as a document filed in support of Samsung’s motion to strike. See Apple’s Mot. to Stay at 1-2. Samsung has also filed an appeal with the Federal Circuit, appealing the portions of the Order that denied sealing of documents containing Samsung’s “profit, loss and cost information.” Samsung’s Mot. to Stay at 2, ECF No. 1723. The parties have exempted from their appeals rulings on exhibits to be introduced at trial because the parties have entered into a stipulation to reduce the

1 amount of confidential information at trial. *See* Samsung’s Mot. to Stay at 6; Apple’s Mot. to Stay
2 at 2.


3 For the district court, Federal Rule of Civil Procedure 62(c) vests the power to stay an order
4 pending appeal with the district court. *See* Fed. R. Civ. P. 62(c). For both the appellate court and
5 the district court “the factors regulating the issuance of a stay are generally the same: (1) whether
6 the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether
7 the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will
8 substantially injure the other [parties’ interest] in the proceeding; and (4) where the public interest
9 lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Deciding whether to grant a stay of an order
10 pending an appeal is an equitable inquiry. Each factor in the analysis need not be given equal
11 weight. *Standard Havens Prods. v. Gencor Indus.*, 897 F.2d 511, 512 (Fed. Cir. 1990). “When
12 harm to applicant is great enough, a court will not require ‘a strong showing’ that applicant is
13 ‘likely to succeed on the merits.’” *Id.* (citing *Hilton*, 481 U.S. at 776). Indeed, in *Hilton* the
14 Supreme Court acknowledged, “the traditional stay factors contemplate individualized judgments
15 in each case, the formula cannot be reduced to a set of rigid rules.” *Hilton*, 481 U.S. at 777.
16 “Thus, the four stay factors can effectively merge,” and a court therefore, “assesses movant’s
17 chances for success on appeal and weighs the equities as they affect the parties and the public.”
18 *Standard Havens Prods.*, 897 F.2d at 513 (citations omitted).

19 Although this Court does not believe that the partial denial of the parties’ sealing request
20 was erroneous, this Court nonetheless recognizes that should the Federal Circuit disagree, the
21 parties will be deprived of any remedy if this Court does not stay its order. When the information
22 is publicly filed, what once may have been trade secret no longer will be. Thus, the parties may be
23 irreparably injured absent a stay. In contrast, the public interest, which favors disclosure of
24 relevant information in order to understand the proceedings, is not unduly harmed by a short stay.
25 As explained above, none of the trial exhibits is the subject of the parties’ appeals or this motion to
26 stay. Moreover, a short stay would merely maintain the status quo until the parties can seek stay
27 relief from the Federal Circuit. Accordingly, after balancing the interests of the parties and the
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1 public interest, the Court grants a brief stay of the August 9, 2012 Order¹ Granting-in-Part and
2 Denying-in-Part the parties' motions to seal. The stay is only in effect pending a decision by the
3 United States Court of Appeals for the Federal Circuit on a motion for stay pending appeal. This
4 Court hereby denies the parties' request for a stay pending the Federal Circuit's ruling on the
5 parties' respective appeals of this Courts' August 9, 2012 Order Granting-in-Part and Denying-in-
6 Part the parties' motions to seal.

7 **IT IS SO ORDERED.**

8 Dated: August 15, 2012


LUCY H. KOH
United States District Judge

United States District Court
For the Northern District of California

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28 ¹ Because this Court's August 9, 2012 Order Granting-in-Part and Denying-in-Part Motions to Seal supersedes this Court's July 17, 2012 Order Denying Sealing Motions Without Prejudice, this Court denies Samsung's Motion to Stay this Court's July 17, 2012 Order as moot.

EXHIBIT 10

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., A CALIFORNIA CORPORATION,	)	C-11-01846 LHK
)	
	)	SAN JOSE, CALIFORNIA
PLAINTIFF,)	
	)	AUGUST 15, 2012
VS.)	
	)	VOLUME 9
SAMSUNG ELECTRONICS CO., LTD., A KOREAN BUSINESS ENTITY; SAMSUNG ELECTRONICS AMERICA, INC., A NEW YORK CORPORATION; SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, A DELAWARE LIMITED LIABILITY COMPANY,)	PAGES 2651-2965
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DEFENDANTS.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595
IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

1 SAN JOSE, CALIFORNIA AUGUST 15, 2012

2 P R O C E E D I N G S

3 (WHEREUPON, THE FOLLOWING PROCEEDINGS
4 WERE HELD OUT OF THE PRESENCE OF THE JURY:)

5 THE COURT: GOOD MORNING. SO I JUST
6 FILED THE ORDER GRANTING IN PART AND DENYING IN
7 PART THE PARTIES' MOTIONS TO STAY PENDING APPEAL.

8 HOW QUICKLY CAN YOU GET YOUR MOTIONS FOR
9 STAY FILED WITH THE FEDERAL CIRCUIT?

10 MS. MAROULIS: WE CAN DO IT THIS WEEK,
11 YOUR HONOR.

12 THE COURT: BECAUSE I DON'T -- I'M NOT
13 GRANTING AN INDEFINITE STAY. IT'S ONLY UNTIL THE
14 CIRCUIT COURT GRANTS A STAY PENDING THEIR RULING ON
15 YOUR APPEAL.

16 MS. MAROULIS: IF POSSIBLE, YOUR HONOR,
17 WE WOULD LIKE MONDAY.

18 MR. LEE: I THINK THAT WOULD -- I AGREE.

19 THE COURT: OKAY. THAT'S FINE. I DON'T
20 KNOW IF MR. OLSON IS HERE, IF HE WANTS TO OBJECT.

21 CAN YOU DO IT BY FRIDAY? I MEAN, I'M
22 ASSUMING -- YOU'VE ALREADY FILED YOUR NOTICES, BUT
23 YOU HAVEN'T FILED YOUR ACTUAL APPEALS, IS THAT
24 RIGHT? OR WHAT'S THE STATUS?

25

1 MR. SELWYN: APPLE HAS FILED ITS NOTICE,
2 NOT ITS OPENING BRIEF.

3 THE COURT: I SEE. WHEN ARE YOU GOING TO
4 FILE YOUR OPENING BRIEF?

5 MR. SELWYN: WE'RE PREPARING TO FILE THAT
6 THIS WEEK.

7 THE COURT: AND WHAT ABOUT FOR SAMSUNG?

8 MS. MAROULIS: WE'RE WORKING ON IT, YOUR
9 HONOR. IF WE NEED TO FILE IT ON FRIDAY, WE WILL.

10 THE COURT: OKAY. WOULD YOU PLEASE DO
11 THAT. SO THE MOTIONS FOR STAY, PARTIES WILL FILE
12 WITH THE CIRCUIT COURT ON FRIDAY, WHICH IS, I
13 THINK, THE 17TH; IS THAT RIGHT?

14 MR. MCELHINNY: YES, YOUR HONOR.

15 THE COURT: AUGUST 17TH.

16 ALL RIGHT. SO THAT'S THAT ISSUE. I
17 REVIEWED THE REDACTIONS TO PX 78. I APPROVED
18 THOSE. THAT LOOKS FINE.

19 NOW, I'VE READ THE MOTION TO EXCLUDE
20 MR. CHAPMAN, I THINK IT'S MS. KIM, AND SONY RECORD
21 KEEPER. IS APPLE GOING TO FILE A RESPONSE OR --
22 OR, I WAS GOING TO SAY, BASED ON WHAT SAMSUNG HAS
23 FILED, I'M LIKELY TO GRANT THE MOTION TO EXCLUDE.

24 CAN WE SAVE THE EXTRA STEP HERE? DO YOU
25 REALLY NEED THESE PEOPLE? I'M NOT SAYING YOU MAY

EXHIBIT 11

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11
 12 Attorneys for Plaintiff and
 13 Counterclaim-Defendant APPLE INC.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

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 18 APPLE INC., a California corporation,

19 Plaintiff,

20 v.

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

24 Defendants.

Case No. 11-cv-01846-LHK (PSG)

**DECLARATION OF JIM BEAN IN
 SUPPORT OF APPLE’S MOTION TO SEAL
 PREVIOUSLY FILED MOTIONS AND
 EXHIBITS THERETO**

1 I, Jim Bean, hereby declare as follows:

2 1. I am an employee of Apple Inc. (“Apple”). My title is Vice President of Financial
3 Planning & Analysis. As part of my role, I am very familiar with financial information and
4 systems at Apple, and the efforts Apple takes to ensure that sensitive financial information is kept
5 confidential. I have personal knowledge of the matters set forth below. If called as a witness I
6 could and would competently testify as follows.

7 2. Apple seeks to seal financial documents or portions of financial documents that
8 contain: (1) capacity data, (ii) product line details beyond general categories such as “iPhone,”
9 “iPad,” “iPod touch,” or “iTunes,” (iii) information regarding costs and profit margins, and (iv)
10 information regarding the terms of patent license agreements that Apple has entered into, as well
11 as information regarding royalties paid under those agreements. Exposure to the public of these
12 categories of documents would cause that information to become public where it is currently
13 confidential and, in doing so, cause Apple severe harm.

14 3. This confidential financial data is not included in Apple’s SEC filings. Apple goes
15 to extensive lengths to protect the confidentiality of its financial data—indeed, this information is
16 among the most painstakingly protected information at the company, on par with source code.
17 The material is stamped confidential, and only certain individuals at Apple are authorized to view
18 Apple’s nonpublic financial information on a need to know basis. Apple restricts system access
19 to its nonpublic financial information to a small list of individuals who have been approved by
20 myself or one of the other Vice-Presidents of Finance. The list is reviewed at least every quarter
21 and revised as appropriate to ensure that Apple employees who no longer require access do not
22 receive the information. Apple further protects against the disclosure of nonpublic financial
23 information to third parties, such as vendors. On the rare occasions Apple is required to share
24 nonpublic financial data with third parties, Apple will only allow them to view this information
25 under very restrictive nondisclosure agreements or protective orders.

26 4. Much of the financial information that Apple seeks to seal here is treated with an
27 even higher level of confidentiality. Apple views even general profit margin information across
28 different products and over a lengthy period of time to be confidential and competitively

1 sensitive, but specific cost and profit margin information for particular products is even more so
2 because it has the most value to companies seeking to compete with Apple. Apple's cost and
3 margin information and its profit and loss data for particular products is only shared with the
4 company's CFO, CEO, Apple's Board and the Company's executive team. It is never shared
5 externally. Apple even precludes its OEM suppliers from having visibility into its cost structure.
6 Although many companies in the industry have their OEM suppliers buy directly from component
7 manufacturers, Apple buys from these manufacturers itself and provides the component parts to
8 the OEMs so that they are not aware of the cost of Apple's products.

9 5. Information regarding costs of goods sold, product line details, profit and capacity
10 is immensely valuable precisely because of its confidential nature. Companies engaging in free-
11 market competition normally do not share this type of sensitive financial information with each
12 other and thus must compete without perfect insight into their competitors' financial status,
13 business models, or business plans. Maintaining the confidentiality of its financial data thus
14 allows Apple to remain competitive in an opaque and fast-moving marketplace. Making Apple's
15 confidential information available to the public, and thus to Apple's competitors, would allow
16 those competitors to obtain economic value from its disclosure at Apple's expense.

17 6. Capacity data is valuable because it can reveal when Apple is stretched thinly and
18 when it has excess capacity. Armed with this information, Apple's competitors could alter their
19 production timing accordingly. For example, Apple's competitors could increase production of
20 competing products at times when Apple typically has constrained capacity and thus would be
21 most vulnerable to an output squeeze, and could lower their prices of competing products at times
22 when Apple has excess capacity and thus would be most vulnerable to a price cut. In addition, if
23 contract manufacturers gain access to Apple's capacity data, it would harm Apple immensely.
24 Success in Apple's industry is in large part dependent upon identification and selection of key
25 contract manufacturers. If these entities are able to view Apple's historical and recent capacity
26 data, and thereby gain insight into the patterns in the fluctuations of Apple's supply chain, they
27 would be able to predict when Apple may be most driven to increase supply and could negotiate
28 exorbitant rates using their unfairly gained knowledge.

1 7. Product line information, i.e. financial details with information as to specific
2 versions of a given product (iPhone 3GS vs. iPhone 4S, or different sizes of iPad), is also
3 critically sensitive and valuable. Competitors who are permitted to view product line capacity
4 information will see what specific lines of products Apple is increasing its supply of and what it is
5 decreasing its supply of, giving a significant insight into Apple's current and future business
6 plans. Product line sales and revenue information would similarly reveal to competitors whether
7 and to what extent Apple has had success with particular products over precise periods of time,
8 and thus allow those competitors insight into how much they should invest in that specific area.
9 Competitors will know exactly what products they need to release in order to counter Apple, and
10 in what categories—for example, the specific size of phone or tablet that Apple is focusing the
11 majority of its attention on.

12 8. Apple's cost and profit information would also provide an economic boon to
13 Apple's competitors if disclosed, giving them a substantial and unfair advantage over Apple.
14 Apple does not follow any formula for setting its margins, nor does it follow an industry
15 standard—the specific margins set for particular products are unique to Apple and they are not
16 publicly disclosed. As a result, competitors could only learn this information from disclosure of
17 Apple's confidential internal documents. Disclosure of this information would allow competitors
18 to tailor their product offerings and pricing to undercut Apple. Competitors would be able to
19 determine exactly what price level would make a given product unprofitable to Apple, and target
20 their product offerings at exactly that price. Access to Apple's cost information would also harm
21 Apple with respect to component suppliers. Apple's suppliers could use this information to alter
22 their pricing on components Apple uses in its products, looking at the cost of goods for Apple's
23 related products and Apple's product margins on specific products. Margins alone would allow
24 competitors to approximate Apple's cost, as they could simply research Apple's prices or publicly
25 available total revenue information, and calculate Apple's cost using that information in
26 combination with the highly confidential margin information.

27 9. Apple also seeks to seal the terms of various license agreements. In all cases,
28 these license agreements are subject to strict confidentiality provisions, oftentimes the very

1 existence of the agreement itself must be kept confidential. Apple has not disclosed the terms of
2 the agreements it is seeking to seal here. Even within Apple, very few employees have access to
3 these agreements. They are stamped confidential, and they are maintained in a highly secure
4 manner to prevent any inadvertent disclosure. If terms of licenses to patents not subject to any
5 FRAND obligation were disclosed—in particular amounts paid, royalty rates and duration—
6 potential licensees and licensors could use this information to gain an unfair negotiating
7 advantage over Apple and the companies involved in the license agreements. Disclosure of the
8 terms of these Apple license agreements would reveal what Apple did in the past, and could
9 permanently damage Apple’s negotiations in the future as third parties would expect similar
10 terms, basing their expectations on heavily negotiated agreements that were meant to be
11 confidential.

12 10. Apple also seeks to seal internal Apple royalty charts. These royalty charts should
13 be sealed for the same reasons as Apple’s license agreements with third parties. The royalty
14 charts track royalty payments paid on a quarterly basis. Besides being information that is meant
15 to be kept confidential under the confidentiality provisions of Apple’s agreements, this
16 information could be used by potential licensees and licensors to gain an unfair negotiating
17 advantage over Apple and the companies involved in the license agreements. Revealing what
18 Apple has done in the past would inhibit Apple’s ability to negotiate in the future as third parties
19 would expect similar terms.

20 11. None of the material above has been disclosed publicly by Apple, nor has this type
21 of information been publicly disclosed by any competitor of whom I am aware. As a result, if
22 Apple’s information were disclosed, Apple’s competitors would have a valuable insight that
23 Apple would not have. This is not a matter of Apple wanting to keep secret information that most
24 of the world shares—this type of information is generally understood in the industry to be
25 critically important to keep under lock and key and is not publicly disclosed by its competitors
26 either.

27 12. I have reviewed Exhibits 1 to 21 to the Declaration of Jason Bartlett in Support of
28 Apple’s Motions to Seal (“Bartlett Declaration”), filed herewith, and Exhibits 1-6, 13, 20 and 21

1 to the Reply Declaration of Christopher Price in Support of Samsung's Motion to Strike, or
 2 versions thereof redacted of Samsung's confidential information. Below is a chart detailing the
 3 specific reasons particular items should be sealed in each documents. Proposed redactions are
 4 submitted with the Bartlett Declaration where appropriate.

Document To Be Sealed	Originally Filed As	Sensitive Information to be Redacted, Consistent with Proposed Redactions Attached to Bartlett Declaration	Notes
<p>5</p> <p>6</p> <p>7</p> <p>8 Ex. 1 to Bartlett Declaration: Musika Expert Report, full report and exhibits</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Exhibit A to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion</p>	<p>¶ 116: operating profit for iTunes and mobile advertising</p> <p>¶ 124: profit numbers</p> <p>¶¶ 127 & 133: capacity information</p> <p>¶ 136: profits on accessory sales</p> <p>¶¶ 170, 172: terms of IBM and Nokia cross-licenses</p> <p>¶ 187: profit on iPhone and iPad as compared to general profit</p> <p>¶ 230: iPhone and iPad gross margins</p> <p>Exh. 3, pages 14: identification of licenses</p> <p>Exh. 16: incremental profit margin</p> <p>Exh. 17.2: capacity data</p> <p>Exh. 20: profit per unit, incremental profit margin, and capacity</p> <p>Exh. 22: gross margins and operating profit for iTunes and mobile advertising</p> <p>Exhs. 26 and 27: capacity data</p> <p>Exh. 32-35: profit and loss statement including costs, gross profit, gross margin, operating expenses, operating profit</p> <p>Exh. 39, 39.1, 39.2, 39.3: cost value</p>	<p>This exhibit consists of the full report, with exhibits, of Apple's damages expert Terry Musika.</p> <p>Paragraph 116 sets out operating profit numbers from 2010 through first quarter 2012 for iTunes and Mobile Advertising, and Exhibit 22 provides more detailed data to support the same. Apple is still in this business, and numbers from 2010 are very recent. This margin information could be used by Apple's competitors against it as described above.</p> <p>Paragraph 124 provides the average profit across all relevant time periods and products considered in Mr. Musika's report, and data that could be used to calculate that profit. This is recent data on products that are currently being sold, and could be used by Apple's competitors against it as described above.</p> <p>Paragraph 127 sets out the amount of capacity Apple seeks to maintain and its overall quarterly excess capacity from 2010 through 2011. These are recent numbers, a continuing policy, and they pertain to products Apple is still selling. Our</p>

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		<p>per unit</p> <p>Exh. 41.3: margin information</p> <p>Exh. 46, 47: income and costs organized by patent</p>	<p>2010 information includes the iPhone 3GS and iPhone 4 models, which we still currently sell. While 2010 information concerns the first iPad only, that product is not as mature, and this data is representative of our current information. This capacity data could be used against Apple by competitors and suppliers as described above, as they reveal Apple's ability to withstand supply/demand shifts, and the amount quarterly excess over recent years. Because Apple is not seeking to seal unit information on a general product level, competitors could therefore use this information to determine when Apple was likely stretched, as they could simply examine when Apple sold a number of units near the upper end of its quarterly excess.</p> <p>Paragraph 133 sets out specific times of shortages in Apple's capacity, including recent quarters. It therefore provides exactly the information described in more detail in this declaration, and would allow competitors to predict Apple's fluctuations in capacity.</p> <p>Paragraph 136 provides Apple's profits for accessories by product. As seen in the exhibits to which this paragraph refers (exhibits 34 and 35), these numbers are fairly recent, and they are on products still sold today. Moreover, although there is some fluctuation, the numbers do not drop change substantially as a function of time, and accordingly, even accessories sales from 2010 are representative of our</p>
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			<p>current information.</p> <p>Paragraphs 170 and 172 set out specific payment terms and durations of licenses. The payment terms discussed in paragraph 170 are for an expired license, but as set out in paragraph 170, the parties reentered into a new license. The license described in paragraph 172 is active.</p> <p>Paragraph 187 sets out a comparison between Apple's profit on specific products and its companywide profit, which would allow competitors to roughly determine the range of Apple's profit for those products.</p> <p>Paragraph 230 reveals Apple's gross profit and operating profit on iPhone and iPad, and a comparison with Samsung's profits. As with the accessories profit discussed above, this data is from recent years and includes currently sold products. The comparison would allow competitors, in particular Samsung, to roughly determine the range of Apple's profit for these products.</p> <p>Exhibit 3, page 14, identifies several of Apple's licenses where the very existence of such an agreement is non-public information.</p> <p>Exhibit 16 identifies an approximation of profit margin based on the subsequent slides. As described above, these are recent numbers, covering from 2010 through 2012, including products that are still sold.</p> <p>Exhibits 17.2, 26, and 27</p>
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			<p>identify specific capacity numbers. This disclosure of historical and recent capacity numbers poses precisely the risk discussed in this declaration—it would allow competitors and suppliers to see Apple’s fluctuations of supply and predict when Apple may be stretched thinly or have oversupply in the future.</p> <p>Exhibit 20 identifies profit, incremental profit margin, and capacity for individual units, organized by patents. This is highly specific and recent information that competitors could use to Apple’s disadvantage as described above.</p> <p>Exhibits 26 and 27 show capacity data and product line details from 2010 through 2012. As above, this exemplifies the risk described in this declaration—it would allow competitors to see how Apple is changing its sales, what products it is pushing more strongly now as compared to last year or the year before, and also displays Apple’s fluctuations in supply.</p> <p>This information relates to our current iPhone and iPad models. Our 2010 information includes the 3GS and iPhone 4 models of the iPhones, which we still currently sell. While 2010 information concerns the first iPad only, that product is not as mature, and this data is representative of our current information.</p> <p>Exhibits 32 through 35 are detailed profit and loss statements including costs, gross profit, gross margin,</p>
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			<p>operating expenses, and operating profit from 2010 through the present. These are very recent numbers, and the exhibit itself shows a relative lack of fluctuation that demonstrates a third party could use these numbers to estimate the most current numbers very easily.</p> <p>Exhibits 39, 39.1, 39.2, and 39.3 contain cost value per unit. This information could be used to estimate total cost, or even cost of components, and thereby be used against Apple as described above.</p> <p>Exhibit 41.3 provides margin information, and as described in the notes on the exhibit, this is determined from the 2010 through 2012 margin information discussed above. This information is very recent, and could be used against Apple as described above.</p> <p>Exhibits 46 and 47 provide income and cost by patent. Like exhibits 39, 39.1, 39.2, and 39.3, this information could be used to estimate total income or cost, or cost of components, and be used against Apple accordingly.</p>
<p>Exhibit 2 to Bartlett Declaration: Musika Expert Report, full report without exhibits</p>	<p>Exhibit 3 to Declaration of Joby Martin in Support of Samsung’s Daubert Motion</p>	<p>¶ 116: operating profit for iTunes and mobile advertising</p> <p>¶ 124: profit numbers</p> <p>¶¶ 127 & 133: capacity information</p> <p>¶ 136: profits on accessory sales</p> <p>¶¶ 170, 172: terms of IBM and Nokia cross-licenses</p> <p>¶ 187: profit on iPhone and iPad as compared to general profit</p> <p>¶ 230: iPhone and iPad gross</p>	<p>This exhibit is identical to the previous exhibits, but for the exclusion of exhibits. The same material is therefore highly sensitive, for the same reasons set out above.</p>

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2	Exhibit 3 to Bartlett Declaration: Musika Expert Report, excerpts without exhibits	Exhibit Q to Mazza Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	¶ 124: dollar amounts of lost profit damages ¶¶ 127 & 133: capacity info ¶ 136: profits on accessory sales	This exhibit consists of excerpts from the previous exhibits. The same material is therefore highly sensitive, for the same reasons set out above.
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6	Exhibit 4 to Bartlett Declaration: Musika Expert Report, exhibit 32	Exhibit 6 to Martin Declaration in Support of Samsung's Daubert Motion	Profit and loss statement including costs, gross profit, gross margin, operating expenses, operating profit	This exhibit consists of a single exhibit from one of the entries above, and is highly sensitive for the reasons set out above.
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9	Exhibit 5 to Bartlett Declaration: Musika Supplemental Expert Report, full report with exhibits	Exhibit B to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	Exh. 16: incremental profit margin Exh. 17.2-S: capacity data Exh. 20-S: profit per unit, incremental profit margin, and capacity Exh. 22: gross margins and operating profit for iTunes and mobile advertising Exhs. 26 and 27: capacity data Exh. 32-S, 33-S, 34, 35: profit and loss statements including costs, gross profit, gross margin, operating expenses, operating profit Exh. 39-S, 39.1-S, 39.2-S, 39.3-S: cost value per unit Exh. 41.3-S: margin information Exh. 46-S, 47-S: income and costs organized by patent	These exhibits are updated or supplemented versions of the same exhibits discussed above. Exhibits 16, 22, 26, 27, 34, and 35 are identical to the Exhibits 16, 22, 26, 27, 34, and 35 discussed above, and are highly sensitive for the same reasons. Exhibits 17.2-S, 20-S, 32-S, 33-S, 39-S, 39.1-S, 39.2-S, 39.3-S, 41.3-S, 46-S, and 47-S are identical to 17.2, 20, 32, 33, 39, 39.1, 39.2, and 39.3, 41.3, 46, and 47 discussed above, but with additional/supplemental data. These exhibits are therefore highly sensitive for the same reasons as the original exhibits, discussed above.
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22	Exhibit 6 to Bartlett Declaration: Musika Supp. Expert Report, selected exhibits	Exhibit 1 to Martin Declaration in Support of Samsung's Daubert Motion	Exh. 41.3-S: iPhone and iPad margin	This exhibit is a repeat filing of 41.3-S, discussed above.
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25	Exhibit 7 to Bartlett Declaration: Musika Supp. Expert Report, Exh. 32-S	Exhibit C to Musika Declaration in Support of Apple's Opposition to Samsung's Motion for	iPhone profit and loss statement including costs, gross profit, gross margin, operating expenses, operating profit	This exhibit is a repeat filing of 32-S, discussed above.
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1		Summary Judgment		
2	Exhibit 8 to Bartlett Declaration: Musika Supp. Expert Report, Exh. 33-S	Exhibit E to Musika Declaration in Support of Apple's Opposition to Samsung's Motion for Summary Judgment	iPad profit and loss statement including costs, gross profit, gross margin, operating expenses, operating profit	This exhibit is a repeat filing of 33-S, discussed above.
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6	Exhibit 9 to Bartlett Declaration: Musika Supp. Expert Report, Exh. 20-S	Exhibit K to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	Profit per unit, incremental profit margin, and capacity	This exhibit is a repeat filing of 20-S, discussed above.
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10	Exhibit 10 to Bartlett Declaration: Musika Supp. Expert Report, exhibits	Exhibit Y to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	Exh. 39-S, 39.1-S, 39.2-S, 39.3-S: cost estimates by patent Exh. 41.3-S: margin of iPhone and iPad	This exhibit consists of repeat filings of exhibits discussed above.
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13	Exhibit 11 to Bartlett Declaration: Musika Supp. Expert Report, exhibits	Exhibit 10 to Martin Declaration in Support of Samsung's Daubert Motion	Exh. 17.2-S: capacity data	This exhibit is a repeat filing of 17.2-S, discussed above.
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16	Exhibit 12 to Bartlett Declaration: Musika Supp. Expert Report, exhibits	Exhibit Z to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion	Exh. 46-S: income and costs organized by patent	This exhibit is a repeat filing of 46-S, discussed above.
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20	Exhibit 13 to Bartlett Declaration: Musika Supp. Expert Report (Exh. 32-S)	Exhibit 7 to Martin Declaration in Support of Samsung's Daubert Motion	iPhone profit & loss statement including cost information, gross profit, gross margin, operating expenses, operating profit	This exhibit is a repeat filing of 32-S, discussed above.
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23	Exhibit 14 to Bartlett Declaration: Samsung's Reply ISO MTS Expert Testimony Based on Undisclosed Facts and Theories and Wagner Decl. thereto	Samsung Reply in Support of Motion to Strike and Wagner Declaration in Support Thereof	Pages 2-3, 5 of Reply: Details of licenses, payments made pursuant to licenses ¶¶ 16-34: Details of licenses	As explained above, this document contains highly confidential Apple and third party information relating to non-public confidential license agreements.
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28	Exhibit 15 to	Exhibit B to	¶ 175, 178-80, 188, 193: Discussion	Paragraphs 175, 178-80, 188,

<p>1 Bartlett</p> <p>2 Declaration:</p> <p>3 Wagner Expert</p> <p>4 Report</p>	<p>Wagner Declaration in Support of Samsung's Reply in Support of Motion to Strike</p>	<p>of supply constraints, in particular in 2010</p> <p>¶¶ 397–398, 404, 524 (Fig. 68): specific details of an acquisition</p>	<p>and 193 discuss at length documents and deposition testimony relating to specific supply and capacity issues in 2010 and 2011. As discussed above, this information would provide competitors and suppliers with detailed information that they can use to predict fluctuations in Apple's supply. Paragraphs 397-398, 404, and 524 discuss specific details of an acquisition and agreement, confidential for the same reasons discussed above with respect to licenses and agreements.</p>
<p>10 Exhibit 16 to</p> <p>11 Bartlett</p> <p>12 Declaration: Exh.</p> <p>13 AA to Musika Decl</p> <p>14 ISO Apple's</p> <p>15 Opposition to</p> <p>16 Samsung Daubert</p>	<p>Exhibit AA to Musika Declaration in Support of Apple's Opposition to Samsung's Daubert Motion</p>	<p>Operating margin</p>	<p>This exhibit sets out apportioned operating margin, and a footnote explains that it is determined by Exhibit 41.3-S. This in turn is an update to Exhibit 41.3, as discussed above, which provides margin information and describes in the that it is determined from the 2010 through 2012 margin information discussed above. This information is very recent, and could be used against Apple as described above. This information relates to our current iPhone and iPad models. Our 2010 information includes the 3GS and iPhone 4 models of the iPhones, which we still currently sell. While 2010 information concerns the first iPad only, that product is not as mature, and this data is representative of our current information.</p>
<p>24 Exhibit 17 to</p> <p>25 Bartlett</p> <p>26 Declaration:</p> <p>27 Teksler Dep</p> <p>28 Testimony</p>	<p>Exhibit P1 to Hecht Declaration in Support of Samsung's Opposition to Apple's Motion for Partial Summary Judgment</p>	<p>This short excerpt contains testimony regarding confidential business information related to specific license negotiations between Apple and various third parties.</p>	<p>As explained above, this document contains highly confidential Apple and third party information relating to licensing negotiations.</p>

1	Exhibit 18 to Bartlett Declaration: Donaldson Expert Report	Exhibit 32 to Martin Declaration in Support of Samsung's Daubert Motion	Pages 23-29 contain payment, royalty, and duration information regarding specific licenses between Apple and various third parties. Footnote 18 contains highly sensitive and confidential Apple and third party information about the cost of certain components in Apple's products.	As explained above, this document contains highly confidential Apple and third party information relating to non-public confidential license agreements. As explained in this declaration, this document contains highly confidential cost information.
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7	Exhibit 19 to Bartlett Declaration: Apple Responses to 4th Set of Interrogatories	Exhibit 67 to Arnold Declaration in Support of Samsung's Motion for Summary Judgment	Pages 28, 29, 31, 39 contains information regarding various license agreements between Apple and third parties where the very existence of such an agreement is non-public information.	As explained above, this document contains highly confidential Apple and third party information relating to non-public confidential license agreements.
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11	Exhibit 20 to Bartlett Declaration: Ordover Expert Report	Exhibit A to Ordover Declaration in Support of Apple's Opposition to Samsung's Motion for Summary Judgment	Footnote 161 contains analysis reflecting the scope of certain confidential license agreements with third parties.	As explained in the attached declaration, this document contains highly confidential Apple and third party information relating to non-public confidential license agreements. [FRAND team to confirm in the morning]
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15	Exhibit 21 to Bartlett Declaration: Wagner Decl Exh. C	Exhibit C to Wagner Declaration (summary of Apple's Licenses and Agreements)	This entire document contains information regarding various license agreements between Apple and third parties where the very existence of such an agreement is non-public information.	As explained in the attached declaration, this document contains highly confidential Apple and third party information relating to non-public confidential license agreements.
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19	Sealed in their Entirety: iPhone and iPad Supply and Sales spreadsheets	Exhibits 20 and 21 to Price Declaration in Support of Samsung's Reply in Support of Motion to Strike	Capacity data from Q2'10-2011	These documents consist entirely of capacity and product line information from 2010 through 2011. This disclosure of historical and recent capacity numbers poses precisely the risk discussed in this declaration—it would allow competitors and suppliers to see Apple's fluctuations of supply and predict when Apple may be stretched thinly or have oversupply in the future. This information would be even more damaging to Apple because it is divided by specific product line.
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1				This information relates to our current iPhone and iPad models. Our 2010 information includes the 3GS and iPhone 4 models of the iPhones, which we still currently sell.
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5	Sealed in their Entirety: License Agreements and Licensing-Related Documents	Price Exhibit 1	The entire document should be withheld. It contains a notice of election pursuant to a license agreement between Apple and a third party. The notice of election contains confidential royalty and term information.	As explained in the attached declaration, this document contains highly confidential Apple and third party information. It relates to a license agreement which contains a confidentiality provision and that is a non-public document.
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10	Sealed in their Entirety: License Agreements and Licensing-Related Documents	Price Exhibit 2	The entire document should be withheld. It is a license agreement between Apple and a third party. Clause 7.0 requires the parties keep this license agreement strictly confidential and not disclose it. The license agreement contains highly confidential information, including information about pricing and the license term.	As explained in the attached declaration, this document contains highly confidential Apple and third party information. This is a non-public license agreement which contains a confidentiality provision.
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15	Sealed in their Entirety: License Agreements and Licensing-Related Documents	Price Exhibit 3	The entire document should be withheld. It is a license agreement between Apple and a third party. Clause 7.0 requires the parties keep this license agreement strictly confidential and not disclose it. The license agreement contains highly confidential information, including information about pricing and the license term.	As explained in the attached declaration, this document contains highly confidential Apple and third party information. This is a non-public license agreement which contains a confidentiality provision.
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20	Sealed in their Entirety: License Agreements and Licensing-Related Documents	Price Exhibit 4	The entire document should be withheld. It is a license agreement between Apple and a third party. Clause 5.0 governs confidentiality under the agreement. The license agreement contains highly confidential information, including information about the royalty rate, pricing and the license term.	As explained in the attached declaration, this document contains highly confidential Apple and third party information. This is a non-public license agreement which contains a confidentiality provision.
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26	Sealed in their Entirety: License Agreements and Licensing-Related Documents	Price Exhibit 5	The entire document should be withheld. It is a license agreement between Apple and a third party. Clause 11.2 explains the agreement is confidential and should	As explained in the attached declaration, this document contains highly confidential Apple and third party information. This is a non-
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1			only be disclosed pursuant to a valid discovery order under a protective order. The license agreement contains highly confidential information, including information about the pricing and the license term.	public license agreement which contains a confidentiality provision.
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5	Sealed in their Entirety: License Agreements and Licensing-Related Documents	Price Exhibit 6	This document includes an entire license agreement between Apple and a third party. Section 7.1 of this agreement requires the parties keep this license agreement strictly confidential and not disclose it. The license agreement contains highly confidential information, such as the compensation and other consideration to be exchanged under the agreement and the duration of the agreement.	As explained in the attached declaration, this document contains highly confidential Apple and third party information. This is a non-public license agreement which contains a confidentiality provision.
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11	Sealed in their Entirety: License Agreements and Licensing-Related Documents	Price Exhibit 13	This document includes an entire license agreement between Apple and a third party. Section 9.1 of this agreement requires that requires the parties keep this license agreement strictly confidential and not disclose it. The license agreement contains highly confidential information, such as information pertaining to the compensation to be paid and the duration of the license.	As explained in the attached declaration, this document contains highly confidential Apple and third party information. This is a non-public license agreement which contains a confidentiality provision.
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18 I declare under penalty of perjury that the foregoing is true and correct. Executed this

19 30th day of July, 2012 at Cupertino, California.

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21 /s/ Jim Bean

22 Jim Bean

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EXHIBIT 12

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 12 Attorneys for Plaintiff and
 13 Counterclaim-Defendant APPLE INC.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

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 18 APPLE INC., a California corporation,

19 Plaintiff,

20 v.

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

24 Defendants.

Case No. 11-cv-01846-LHK

**DECLARATION OF GREGORY JOSWIAK
 IN SUPPORT OF APPLE'S MOTION TO
 SEAL TRIAL EXHIBITS**

1 I, Gregory Joswiak, hereby declare as follows:

2 1. I am a Vice President in Apple's Product Marketing department. I submit this
3 declaration in support of Apple's motions regarding sealing, filed contemporaneously herewith. I
4 have personal knowledge of the matters set forth below. If called as a witness I could and would
5 competently testify as follows.

6 2. I understand Apple seeks to seal highly sensitive documents that disclose Apple's
7 market research and strategy. If disclosed to the public, this information would expose Apple to
8 serious competitive harm.

9 3. I understand that Samsung has selected as potential trial exhibits in this action
10 eight of the quarterly iPhone buyer survey reports that compile and analyze results obtained from
11 the monthly surveys of iPhone buyers that Apple conducts. The surveys reveal, country-
12 by-country, what is driving our customers to buy Apple's iPhone products versus other products
13 such as the Android products that Samsung sells, what features they most use, our customers'
14 demographics and their level of satisfaction with different aspects of iPhone.

15 4. I understand that Samsung has also selected six iPad tracking studies as potential
16 trial exhibits. These are very similar in nature to the iPhone buyer surveys. On a quarterly basis,
17 these studies report on and analyze results obtained from surveys of iPad buyers that Apple
18 conducts every month. These reports are also international in scope, and report on, and compare,
19 for different countries, what is driving our customers' decisions to purchase iPad, provide detailed
20 information on the features and attributes they use, customer demographics, consideration of
21 other brands and level of satisfaction with different attributes of the product.

22 5. Apple seeks to seal all surveys and tracking studies of iPhone and iPad buyers. No
23 competitor has access to our customer base to conduct the type of in-depth analysis contained in
24 our buyer surveys and tracking studies. Getting access to this analysis would be of enormous
25 benefit to our competitors. Today, a competitor who is trying to take away Apple market share
26 can only speculate as to the importance that Apple's customers place, for instance, on FaceTime
27 video calling, battery life, or Siri voice capability. They have to guess as to what demographics –
28 age, gender, occupation – are most satisfied with Apple's products. Certainly, they do not know

1 how the preferences of customers in, for example, Japan differ from those in Australia, Korea,
2 France or the United States. Perhaps most importantly, they are unable to observe trends over
3 time. All of that information is set out in exacting detail in the proposed exhibits. No other entity
4 could replicate this research because no other entity has access to the customer base that Apple
5 has. And no other entity could replicate the trend data by conducting its own survey today.

6 6. Also important are the *conclusions* Apple has drawn from the data. Knowing
7 about Apple's customer base preferences is extremely useful to a competitor, but knowing what
8 Apple thinks about its customer base preferences is even more valuable. If Apple had access to
9 this kind of in-depth analysis of our competitors, we could infer what product features our
10 competitors are likely to offer next, when, and in what markets. Our probability of success in
11 predicting our competitors' next move next would improve dramatically. Having that level of
12 insight and confidence in our competitors' next moves would allow us to target our efforts to
13 prepare products and marketing counterstrategies in the short term, and target our long-term
14 product plans to stay far ahead of the competition. Given unfettered access to Apple's recent
15 internal market research, I have no doubt that Apple's competitors would use it as described
16 above, resulting in serious competitive harm to Apple.

17 7. Because of the extreme sensitivity of this product research information,
18 distribution of the iPhone buyer surveys and iPad tracking studies is very tightly controlled within
19 Apple. The documents are stamped as confidential on a "need to know" basis. Consistent with
20 this designation, *no* internally conducted surveys of Apple customers are allowed to circulate
21 outside a small, select group of Apple executives. No iPhone-related surveys or iPad-related
22 surveys are allowed to be distributed to *anyone* outside this group without my personal express
23 permission, which I regularly refuse. When I do approve further distribution, it is almost always
24 on a survey question-by-survey question basis, and even then distribution is limited to individuals
25 who have a demonstrated need to know.

26 8. Trial Exhibit DX614 is the iPhone buyer survey report for the one month period of
27 August 2010. Trial Exhibit DX772 is the iPhone buyer survey report for the second quarter of
28 Apple's 2010 fiscal year ("FY '10 Q2"). Trial Exhibit DX773 is the iPhone buyer survey report

1 for FY '10 Q3. Trial Exhibit DX774 is the iPhone buyer survey report for FY '10 Q4. DX775 is
2 the iPhone buyer survey report for FY '11 Q1. Trial Exhibit DX534 is the iPhone buyer survey
3 report for FY '11 Q2. DX776 is the iPhone buyer survey report for FY '11 Q3. Trial Exhibit
4 DX767 is the iPhone buyer survey report for FY '11 Q4. Each of these documents follows a
5 substantially similar format, reporting on the same type of information for iPhone buyers from
6 surveys conducted during the period of time that it covers. During this time there was a slight
7 change to some of the countries on whom we report internationally, but otherwise the reports are
8 quite similar.

9 9. Each of the eight iPhone buyer survey reports listed in paragraph 8 above are
10 treated as highly confidential within Apple and are distributed only to a very limited group and on
11 a need to know basis, as described in paragraph 7 above. Public disclosure of these reports would
12 cause significant competitive harm to Apple for the reasons described above. It would allow
13 competitors to target the features that most attract our customers, to learn precisely how different
14 demographic groups of customers and customers in geographic regions view our products and
15 how they make use of them. The survey reports contain the conclusions Apple has drawn from
16 the data. In addition, because these reports span a 2 year period beginning in the second quarter
17 of 2010, they show the trend as to how this data has changed over time. We consider each of
18 these eight iPhone buyer survey reports to be current and to contain information of which we
19 make active use. The earliest survey report, for the month of August 2010, covers iPhone 4, a
20 phone which Apple still actively markets and sells today. No competitor could replicate this
21 information without obtaining the information internally from Apple.

22 10. DX768 is the iPad tracking study for the one month period of July 2010, created in
23 September 2010. DX769 is the iPad tracking study for FY '10 Q4. DX770 is the iPad tracking
24 study for FY '11 Q1. DX617 is the iPad tracking study for FY '11 Q2. DX771 is the iPad
25 tracking study for FY '11 Q3. DX766 is the iPad tracking study for FY '11 Q4. As is the case
26 with the iPhone buyer surveys discussed in this declaration, each of these iPad tracking studies
27 follows a substantially similar format, and reports and analyses data in response to surveys
28 containing the same types of questions for the period of time that they address.

1 11. Apple strictly maintains the confidentiality of each of these iPad tracking studies
2 in accordance with the procedures described in paragraph 7 above. Public disclosure of the
3 studies would seriously harm Apple. As with the iPhone buyer studies, it would give our
4 competitors full access from surveys conducted of our customer database to the reasons why our
5 customers purchase iPads, how they make use of them and their level of satisfaction broken down
6 by demographics and country, as well as to the conclusions that Apple itself has drawn from this
7 data. Together, the five surveys show how this data has changed over the past two years. We
8 still consider all of this information to be current and make use of it in our marketing and product
9 decisions. When iPad was first released in April 2010, there was no other product of its kind.
10 Obtaining information from July 2010 would be incredibly valuable to companies who are trying
11 to put forward competing products. It shows in great detail how customer preferences have
12 evolved over the time that iPad has been sold. Even if competitors could reliably survey Apple's
13 current customers (they cannot) to determine their preferences today, they certainly cannot
14 reliably reconstruct what Apple customer's preferences were in the past. Accordingly only Apple
15 has access to the extremely valuable time series of information that shows how customer
16 preferences have evolved. As the first company to successfully launch a tablet computer with
17 broad consumer appeal, Apple is far ahead of its competitors in understanding this important new
18 category of mobile electronic devices. Both the underlying data sets and the insights Apple has
19 drawn from them are carefully guarded Apple trade secrets. Disclosure to Apple's competitors
20 would give them inside knowledge of the market and what Apple's customers are thinking and
21 valuing.

22 12. I wish to add that Apple is not seeking to seal all of its marketing research
23 documents in this action. In particular, Apple has made the difficult decision not to seek sealing
24 of certain marketing research reports that report survey results on iPhone or iPad that were not
25 limited to Apple's customer base. Some of these reports were created by third party ComTech.
26 Others were created by Apple's internal marketing research department. Apple has expended
27 significant effort and expense gathering the information in these different reports and surveys,
28 and internally treats these documents on a strictly confidential basis as well. However, I

1 understand that the Court wants the parties to restrict their requests to seal to only their most
2 sensitive confidential information. We view the iPhone buyer surveys and iPad tracking studies,
3 and similar surveys taken of our Apple customer database, which cannot be replicated by
4 competitors, as the crown jewels of the marketing research group.

5 13. There is one additional document containing Apple's marketing research that
6 Apple is seeking to seal. Exhibit DX701 is a summary that I understand was created by Samsung.
7 It reports data taken from the iPhone quarterly buyer surveys and the iPad tracking surveys
8 discussed above. Pages 1 through 3 explicitly state that they report actual data taken from the
9 iPhone quarterly buyer surveys covering Q2 2010 through Q4 2011 relating to the importance of
10 features to the consumers' iPhone purchase, and other brands that were considered. Pages 7
11 through 9 consist of actual data taken from iPhone quarterly buyer surveys and iPad tracking
12 studies for the period June 2010 through Q2 2011 in the case of page 7 and Q4 2011 for pages 8
13 and 9. These pages report on the importance of features to consumers' decisions to purchase an
14 iPhone or iPad. As I described above, this summary reports data that can only be obtained from
15 Apple's customer base, which no competitor can replicate. As reported in this format, it contains
16 precisely the type of trend data that Apple believes is valuable in evaluating purchase decisions.
17 This information would be of great value to any competitor who is trying to take away Apple
18 market share for iPhone or iPad because it shows the importance that Apple's customers place on
19 features or attributes such as screen size, weight, battery life and camera capability. Consistent
20 with the approach that Apple has taken to sealing other marketing research documents, Apple is
21 not requesting to seal pages 4 through 6 of exhibit 701, which report information obtained from a
22 third party report commissioned by Apple, even though I believe that such data would still be of
23 value to competitors and Apple has taken steps to guard the confidentiality of this data as well.

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26 I declare under penalty of perjury that the foregoing is true and correct. Executed this
27 30th day of July, 2012 at Cupertino, California.

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/s/ Gregory Joswiak
Gregory Joswiak

