

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

HAROLD J. MCELHINNY (CA SBN 66781)  
hmcclhinny@mofo.com  
MICHAEL A. JACOBS (CA SBN 111664)  
mjacobs@mofo.com  
JENNIFER LEE TAYLOR (CA SBN 161368)  
jtaylor@mofo.com  
ALISON M. TUCHER (CA SBN 171363)  
atucher@mofo.com  
RICHARD S.J. HUNG (CA SBN 197425)  
rhung@mofo.com  
JASON R. BARTLETT (CA SBN 214530)  
jasonbartlett@mofo.com  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

WILLIAM F. LEE  
william.lee@wilmerhale.com  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
60 State Street  
Boston, MA 02109  
Telephone: (617) 526-6000  
Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)  
mark.selwyn@wilmerhale.com  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
950 Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 858-6000  
Facsimile: (650) 858-6100

Attorneys for Plaintiff and  
Counterclaim-Defendant APPLE INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

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,

Defendants.

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

**UNOPPOSED MOTION TO STAY  
EFFECT OF JULY 29, 2013  
ORDER (DKT. 2350)**

1 Plaintiff Apple Inc. (“Apple”) respectfully requests that the Court stay its Order Granting  
2 Third Party Rovi’s Limited Motion to Intervene and Granting-in-Part and Denying-in-Part  
3 Motion to Seal (Dkt. 2350) (“Order”) insofar as it relates to Apple’s license agreement with Rovi  
4 Corp. (“Rovi”), pending the outcome of Apple’s currently pending appeal with the Federal  
5 Circuit relating to sealing issues.

6 A stay of this Court’s order denying Rovi’s motion to seal in full its license Agreement  
7 with Apple is essential to Apple obtaining the relief requested in its appeal. As the Court has  
8 previously held, once information is publicly filed, “what once may have been trade secret no  
9 longer will be. Thus, the parties may be irreparably injured absent a stay. In contrast, the public  
10 interest, which favors disclosure of relevant information in order to understand the proceedings, is  
11 not unduly harmed by a short stay.” (Dkt. No. 2047 at 7.)

12 Apple conferred with counsel for Samsung and counsel for Rovi and they do not oppose  
13 this request. (Declaration of Mark D. Selwyn in Support of Apple’s Motion to Stay Effect of July  
14 29, 2013 Order (Dkt. 2350) (“Selwyn Decl.”) ¶¶ 2-3.)

#### 15 **I. BACKGROUND**

16 On February 1, 2013, this Court denied Apple’s motion to seal in full certain license  
17 agreements that were attached to non-dispositive motions (Dkt. No. 2222.) The Court granted  
18 Apple leave to “bring another motion that is narrowly tailored to the licensing terms or that  
19 provides a particularized showing of harm that would result if other details from the licensing  
20 terms were disclosed.” (*Id.* at 19, 27, 28.)

21 On February 13, 2013, the Parties filed a stipulation and proposed order which stated that  
22 the parties would only re-file publicly “all documents not covered by a stay or renewed motion to  
23 seal.” (Dkt. No. 2226.) The Court signed the Order on February 14. (Dkt. No. 2227.) The  
24 parties also filed motions to stay the Court’s order regarding the documents that were the subject  
25 of the renewed motions to seal. (Dkt. Nos. 2230, 2233.) The Court found “a stay pending  
26 resolution of the renewed motions appropriate” and granted the parties’ requests. (Dkt. 2267 at 2;  
27 *see also* Dkt. 2232.)

1 Apple filed a Renewed Motion to Seal on February 15 (Dkt. No. 2228) and a Corrected  
2 Renewed Motion to Seal on February 20, 2013 (Dkt. No. 2250) (“Renewed Motion”).<sup>1</sup> As Apple  
3 explained in its Renewed Motion, under the “good cause” standard, Apple’s license agreements  
4 with third parties should be sealed in full. (Dkt. 2250 at 9-10.) In Apple’s Renewed Motion,  
5 Apple also requested that “if the Court denies sealing of any of the materials that are the subject  
6 of this motion, the Court continue its practice of staying effect of its order pending appeal.” (Dkt.  
7 2250 at 12.) Apple’s Corrected Renewed Motion to Seal is still pending before this Court.

8 On March 14, 2013, Rovi filed a Combined Motion for (1) Leave to Intervene for the  
9 Limited Purpose of Sealing Portions of its Trade Secret/Confidential License and (2) to Seal Said  
10 Information. (Dkt. 2274.) Rovi’s motion did not request the Court stay the effect of an order  
11 pending appeal. On July 29, 2013, this Court issued an Order Granting Third Party Rovi’s  
12 Limited Motion to Intervene and Granting-in-Part and Denying-in-Part Motion to Seal. (Dkt.  
13 2350.) In that Order, the Court stated “should Rovi or Apple believe that the effect of this Order  
14 must be stayed pending the appeal with the Federal Circuit, Rovi and/or Apple must file a formal  
15 request for a stay of the effects of this Order within seven (7) days.” (*Id.* at 6-7, fn. 3.)

## 16 **II. ARGUMENT**

17 Apple respectfully requests that this Court stay the effect of this Order pending the  
18 Federal Circuit’s resolution of Apple’s currently pending appeal on sealing issues.<sup>2</sup> As this Court  
19 has previously held, and noted again in its July 29 Order, “once information is publicly filed,  
20 ‘what once may have been trade secret no longer will be. Thus the parties may be irreparably  
21 injured absent a stay. In contrast, the public interest, which favors disclosure of relevant  
22 information in order to understand the proceedings, is not unduly harmed by a short stay.’” (Dkt.  
23

---

24 <sup>1</sup> The Corrected Renewed Motion to Seal included Exhibit 23 to the Pernick Declaration  
25 in Support of Apple’s Opposition to Samsung’s Motion to Strike (Dkt. No. 996), which was  
inadvertently omitted from the Renewed Motion to Seal. No other changes were made to the  
renewed motion. (Dkt. No. 2251.)

26 <sup>2</sup> Oral argument in that appeal was held on March 26, 2013. Apple expects the decision  
27 will provide guidance to this Court on Apple’s request in its Renewed Motion to seal the Rovi  
license agreement in full.

1 No. 2350 at 6 n.3 (quoting Dkt. No. 2047 at 7.) There is no reason to treat the confidential  
2 Apple-Rovi license differently from other sealed information this Court has previously  
3 encountered in this case. *See In re Cyclobenzaprine Hydrochloride Extended-Release Capsule*  
4 *Patent Litig.*, 449 Fed. App'x 35, 36 (Fed. Cir. 2011) (nonprecedential) (The Federal Circuit  
5 balances four factors when determining whether to stay a district court's order pending appeal:  
6 "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the  
7 merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of  
8 the stay will substantially injure the other parties interested in the proceeding; and (4) where the  
9 public interest lies.") (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *Standard Havens*  
10 *Prods., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 513 (Fed. Cir. 1990) ("When harm to applicant  
11 is great enough, a court will not require 'a strong showing' that applicant is 'likely to succeed on  
12 the merits.'" (quoting *Hilton*, 481 U.S. at 776)); *see also Nken v. Holder*, 556 U.S. 418, 429  
13 (2009) ("A stay 'simply suspend[s] judicial alteration of the status quo[.]'" (first alteration in  
14 original) (quoting *Ohio Citizens for Responsible Energy, Inc. v. NRC*, 479 U.S. 1312, 1313  
15 (1986) (Scalia, J., in chambers))); *Prometheus Radio Project v. FCC*, No. 03-3388, 2003 WL  
16 22052896, at \*1 (3d Cir. Sept. 3, 2003) (nonprecedential) (citing "the public's interest in reaching  
17 the proper resolution" as reason to stay "pending thorough and efficient judicial review").

### 18 III. CONCLUSION

19 For the foregoing reasons, the Court should stay its Order pending resolution of Apple's  
20 pending appeal to the Federal Circuit.

21 Dated: August 2, 2013

WILMER CUTLER PICKERING  
HALE AND DORR LLP

/s/ Mark D. Selwyn

Mark D. Selwyn (SBN 244180)  
(mark.selwyn@wilmerhale.com)  
950 Page Mill Road  
Palo Alto, CA 94304  
Telephone: (650) 858-6000  
Facsimile: (650) 858-6100

*Attorneys for Plaintiff and  
Counterclaim-Defendant Apple Inc.*

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on August 2, 2013 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