

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, )

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. )

ORDER GRANTING IN PART AND  
DENYING IN PART RELIEF FROM  
MAGISTRATE JUDGE ORDER;  
GRANTING MOTION TO STAY

On October 23, 2012, nonparty Motorola Mobility LLC (“Motorola”) moved for relief from an order by Magistrate Judge Grewal denying Motorola’s Emergency Motion to Seal Exhibit 23. *See* Mot. for Relief from Magistrate’s Order (“Mot.”), ECF No. 2081; Minute Order, ECF No. 2040. Motorola sought to seal a document known as Exhibit 23, which is Samsung’s summary of a licensing negotiation it conducted with Motorola on September 7, 2000. Judge Grewal denied Motorola’s motion to seal because he found that, given the age of the document, any competitive harm to Motorola did not sufficiently outweigh the public interest in access to satisfy the “good cause” standard. *See* Transcript at 13-14, ECF No. 2044. Judge Grewal also noted that Motorola

1 had not proposed redactions, but rather had sought to seal an entire document, some of which was  
2 clearly not confidential. *Id.* at 14.

3 Pursuant to Federal Rule of Civil Procedure 72, a district judge may set aside a magistrate  
4 judge's non-dispositive pretrial order only if it is "clearly erroneous or contrary to law." Fed. R.  
5 Civ. P. 72(a). This standard is deferential; "[t]he reviewing court may not simply substitute its  
6 judgment for that of the deciding court." *Grimes v. City & County of San Francisco*, 951 F.2d 236,  
7 241 (9th Cir. 1991).

8 Here, Motorola objects to two aspects of Judge Grewal's ruling: (1) that Exhibit 23 is not  
9 sealable under the "good cause" standard; and (2) that Motorola could not, in the face of this  
10 denial, then submit a redacted version of the document for further consideration. *See Mot.* at 4-5.

11 As regards the denial of the request to seal the whole document, Judge Grewal found that:  
12 (1) given the age of the document, it was unlikely to cause significant competitive harm; and (2)  
13 there was "clearly information in this exhibit which should not be kept under seal," in addition to  
14 the more sensitive information. Transcript at 13:25-14:1. In light of these two facts, Judge Grewal  
15 found that Motorola's request did not meet the "good cause" standard imposed in the Ninth Circuit  
16 for sealing of documents related to non-dispositive motions.

17 As Judge Grewal stated, the standard for sealing Exhibit 23 is "good cause." *See Pintos v.*  
18 *Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010). The Ninth Circuit has explained that the  
19 "good cause" standard, while not as stringent as the "compelling reasons" standard, still requires a  
20 "particularized showing" that can "warrant preserving the secrecy of sealed discovery material  
21 attached to non-dispositive motions." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172,  
22 1180 (9th Cir. 2006). Judge Grewal found, and Motorola agreed, that some of the material in  
23 Exhibit 23 "has no reason or business being kept under seal." Transcript at 11:6-8. Judge Grewal  
24 further found that Motorola had not made a credible particularized showing that competitors could  
25 "use the negotiation history in 2012 from 2000 in a way that prejudices Motorola's position." *Id.*  
26 at 11:20-21. He noted that the claim that Motorola would suffer competitive harm "would  
27 certainly tend to be more true. . . if we were talking about people or portfolios that were being  
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1 negotiated a year ago, six months ago, maybe even two years ago.” *Id.* at 12:18-21. The Court  
2 agrees both that Motorola’s request was over-designated and that Motorola has not articulated how  
3 a competitor could actually use this twelve-year-old information to gain an advantage.  
4 Accordingly, the Court does not find that Judge Grewal’s Order finding that Motorola had not  
5 made the particularized showing necessary to establish good cause was contrary to law.  
6 Motorola’s motion is DENIED as to Judge Grewal’s refusal to seal Exhibit 23.

7 Motorola also objects to Judge Grewal’s denial of Motorola’s request to be allowed to make  
8 yet another submission concerning the sealing of this same document, in the form of proposed  
9 redactions. In denying the request, Judge Grewal noted that the Court had “gone through this  
10 particular document multiple times,” Transcript at 11:13-14, and that “rather than go through yet  
11 another round of briefing and consideration on this issue, [he had] to be mindful of this Court’s  
12 resources.” *Id.* at 14:2-4. The Court agrees that Motorola’s unreasonable attempt to seal the entire  
13 document, especially given the Court’s extensive previous rulings in this case on sealing, is  
14 extremely disappointing and wasteful of the Court’s resources.

15 However, the Ninth Circuit has held, and this Court has ruled, that actual payment terms of  
16 executed licenses are sealable under the “compelling reasons” standard. *See* ECF No. 1649  
17 (August 9, 2012 Sealing Order) at 21 (citing *In re Electronic Arts*, 298 Fed. App’x 568, 569 (9th  
18 Cir. 2008)). At issue here are notes from a negotiation on September 7, 2000—just over three  
19 weeks before the agreement was executed on September 30, 2000. *See* DX630. If numbers  
20 exchanged in a negotiation three weeks before an agreement was executed were made publically  
21 available, the purpose of sealing the payment terms of the executed agreements would be  
22 undermined, as readers could infer the range in which the final payment terms must fall. Thus, the  
23 Court believes that the actual numbers exchanged during the negotiations are sealable under the  
24 lower “good cause” standard. Accordingly, Motorola’s motion as to Judge Grewal’s declination to  
25 consider proposed redactions is GRANTED.

26 Rather than simply objecting to the portion of Judge Grewal’s Order denying Motorola’s  
27 request to submit proposed redactions, Motorola has submitted a redacted version along with its  
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1 Motion for Relief. *See* Declaration of Peter J. Chassman, Exh. B. This submission is not properly  
2 considered as part of Motorola's objection to Judge Grewal's Order, because the proposed  
3 redactions were not before Judge Grewal when he issued the Order to which Motorola now objects.  
4 Moreover, even if the proposed redactions were before this Court, the Court would find that the  
5 proposed redactions are still overbroad, and should be rejected. This Court has previously sealed  
6 pricing, royalty terms, and payments of licensing agreements only. Here, Motorola has proposed to  
7 seal considerably more than those exceptionally sensitive terms.

8 This Court has now considered two overbroad requests by Motorola to seal the same  
9 document, in addition to the request by Samsung that Judge Grewal has already denied. *See* ECF  
10 No. 1978 at 16. Motorola may now have one final opportunity to file a renewed motion to seal and  
11 submit a properly redacted document for Judge Grewal's consideration. Should that request be  
12 overbroad, no further requests from Motorola regarding Exhibit 23 will be considered. Motorola's  
13 renewed motion to seal, if any, must be filed by Friday, November 2, 2012.

14 Finally, on October 23, 2012, shortly before Motorola filed its Motion for Relief, Judge  
15 Grewal entered an Order directing the parties to file an unredacted version of Exhibit 23 by Friday,  
16 October 26, 2012. ECF No. 2080. On October 24, 2012, Motorola filed a motion to stay that  
17 Order, pending resolution of Motorola's Motion for Relief. ECF No. 2086. Because the issue of  
18 sealability of Exhibit 23 has yet to be finally resolved, the Court GRANTS Motorola's motion to  
19 stay the filing of unredacted Exhibit 23, during the pendency of Motorola's renewed motion to seal  
20 Exhibit 23, if any. If Motorola does not file a renewed motion to seal Exhibit 23 by the November  
21 2, 2012 deadline, this Stay shall automatically dissolve, and the parties shall comply with Judge  
22 Grewal's October 23, 2012 Order.

23 For the reasons stated above, Motorola's Motion for Relief is GRANTED in part and  
24 DENIED in part, and Motorola's Motion to Stay Enforcement of Judge Grewal's October 23, 2012  
25 Order Setting Deadline is GRANTED.

26 **IT IS SO ORDERED.**

27 Dated: October 25, 2012



LUCY H. KOH  
United States District Judge

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