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

14 APPLE INC., a California corporation,

15 Plaintiff,

16 v.

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

21 Defendants.

Case No. 11-cv-01846-LHK

**APPLE'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF SAMSUNG'S
ADMINISTRATIVE MOTION TO
FILE DOCUMENTS UNDER SEAL**

1 In accordance with Civil Local Rules 7-11 and 79-5, and General Order No. 62, Apple
2 submits this memorandum in support of Samsung's motion (Dkt. No. 2064) to seal documents
3 related to Samsung's Oppositions to Apple's Motion for Judgment as a Matter of Law, New Trial,
4 and Amended Judgment ("JMOL Opposition") and Apple's Motion for a Permanent Injunction
5 and Damages Enhancements ("PI Opposition").

6 **I. THE COURT SHOULD SEAL CAPACITY INFORMATION, FINANCIAL**
7 **INFORMATION, THIRD PARTY RESEARCH DATA, FULL LICENSE**
8 **AGREEMENTS AND APPLE'S CONFIDENTIAL CONSUMER RESEARCH**

9 The Court should grant Samsung's motion to seal Apple-confidential material as outlined
10 in greater detail below and the Declaration of Cyndi Wheeler in Support of Samsung's Motion to
11 File Under Seal ("Wheeler Decl.") filed herewith. The need to protect trade secrets contained in
12 Apple documents filed in connection with Samsung's motions is a "compelling reason" to seal
13 material, which is sufficient to outweigh the public's interest in disclosure. *Kamakana v. City &*
14 *Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). The type of information that Apple
15 seeks to seal qualifies as trade secret. *See, e.g., SI Handling Sys., Inc. v. Heisley*, 753 F.2d 1244,
16 1260 (3d Cir. 1985) (concluding that data relating to profit margin constituted trade secrets);
17 *Apollo Techs. Corp. v. Centrosphere Indus. Corp.*, 805 F. Supp. 1157, 1198 (D.N.J. 1992) (noting
18 that multiple courts have found customer product use and preference information to be trade
19 secrets).

19 **A. The Court should seal Apple's capacity information**

20 The Court has previously approved sealing of capacity information, including the
21 information Samsung has proposed redacting. (Wheeler Decl. ¶¶ 2-5; Dkt. No. 1649 at 4, 13.)
22 For the same reasons, the Court should seal capacity information filed with Samsung's JMOL
23 Opposition and PI Opposition in Exhibit 13 to the Pierce Declaration ISO Samsung's JMOL
24 Opposition, Exhibit C to the Wagner Declaration ISO Samsung's JMOL Opposition, and Exhibit
25 212 to the Wagner Declaration ISO Samsung's PI Opposition.

26 **B. The Court should seal unredacted license agreements**

27 The Court should also seal Samsung Exhibits 12-1 and 12-2 to the Pierce Decl. ISO PI
28 Opposition, which are complete, unredacted license agreements. (Wheeler Decl. ¶ 14.) The

1 Court has previously sealed such license agreements because they “contain a whole host of terms
2 (e.g. termination conditions, side-agreements, waivers) that are irrelevant to matters in this
3 litigation [and] disclosure of these full documents could result in significant competitive harm to
4 the licensing parties as it would provide insight into the structure of their licensing deals, forcing
5 them into an uneven bargaining position in future negotiations.” (Dkt. No. 1649 at 10, 16.) For
6 the same reason, Apple respectfully requests that Exhibits 12-1 and 12-2 to the Pierce Decl. ISO
7 PI Opposition be sealed.

8 **C. The Court should seal third party confidential research data**

9 Samsung filed an extensive IDC spreadsheet as Exhibit 199 to the Wagner Decl. ISO PI
10 Opposition, with data from this spreadsheet making up Schedules 2.1 and 2.2 in Exhibit 2 to the
11 Wagner Decl. ISO PI Opposition. (Wheeler Decl. ¶¶ 11-12.) The Court has previously granted
12 Apple’s motions to seal consumer research reports prepared by third parties such as IDC (*E.g.*,
13 Dkt. No. 2047 at 4-5). The Court found that release of such information “could harm IDC in so
14 far as it might reduce IDC’s ability to sell its reports to other customers, and the public’s interest
15 in this information about the smartphone market generally is not especially great, and could be
16 satisfied by the information disclosed at trial.” (Dkt. No. 2047 at 4-5; *see also* Dkt. No. 1649 at
17 10.) Pages ‘627, ‘628, ‘629, ‘634, ‘643, ‘644, ‘655, ‘656, ‘667, ‘668, ‘679, ‘680, ‘691, and ‘692
18 of Exhibit 29 to the Wagner Decl. ISO PI Opposition similarly contain data derived from reports
19 published from third parties IDC and Gartner. (Wheeler Decl. ¶ 13.) Consistent with the Court’s
20 prior order, and for the same reasons discussed in Apple’s prior motions to seal, Apple
21 respectfully requests that the Court seal this material.

22 **D. The Court should seal Apple’s highly confidential financial information**

23 Apple has previously moved to seal, supported by detailed declarations, the same types of
24 financial information at issue in Samsung’s PI Opposition, specifically in Exhibits 2, 47, 83, 84,
25 85, 86, 87, 201, 202, 203, 204, and 212 to the Wagner Decl. ISO PI Opposition. (Wheeler
26 Decl. ¶¶ 7-10.) The Court previously denied Apple’s motions but stayed enforcement of its order
27 pending Apple’s appeal to the Federal Circuit. (Dkt. Nos. 1754, 2047.).
28

1 Apple takes extensive steps to protect the secrecy of its critical financial information.
2 Even within Apple, very few people have access to this information. Access is on a “need to
3 know” basis and must be approved in advance by one of Apple’s Vice Presidents of Finance.
4 (Dkt. No. 1502 ¶ 3.) The list of approved individuals is reviewed quarterly and revised to ensure
5 that employees who no longer require access do not receive that information. (*Id.*) On the very
6 rare occasions Apple must disclose its nonpublic financial information to those outside Apple, it
7 marks such information “confidential” and distributes it only subject to highly restrictive
8 nondisclosure agreements or protective orders. (*Id.*)

9 Apple goes to such lengths to protect its financial information because the information is
10 competitively sensitive. Apple derives enormous value from the fact that its financial details are
11 not shared with Apple’s competitors and suppliers. (Dkt. No. 1502 ¶¶ 4-8.) Apple’s competitors
12 could use profits and margins data to undercut Apple’s prices by determining the products for
13 which Apple has substantial profits, low costs, and wide margins and thus would be most
14 susceptible to a price cut. (*Id.* ¶ 8.) Competitors’ products—particularly if released with pricing
15 designed to take advantage of unfair knowledge of Apple’s bottom line—will substantially affect
16 demand for Apple’s products. Competitors could use the information to develop products that
17 they can strategically price to undercut Apple. The facts of this case substantiate this risk.
18 Indeed, Samsung may be in a position to undercut Apple’s prices for smartphones and tablets,
19 having already economized on development costs by free-riding off Apple’s innovation. Apple’s
20 suppliers could use quarterly profits, costs, and margins data to determine when Apple has the
21 highest margins and hike their prices accordingly. (*Id.*)

22 Product-line specific information, i.e. financial details with information as to specific
23 versions of a given product, is also critically sensitive and valuable. (Dkt. No. 1502 ¶ 7.) Product
24 line sales and revenue information reveal to competitors what Apple’s most and least successful
25 products are, and therefore provide unfair intelligence into which markets are ripe for competition
26 and which markets may be more difficult to approach. (*Id.*) Apple respectfully requests that the
27 financial information contained in Samsung’s filings be sealed, as set out in in the Wheeler
28 Declaration ¶¶ 6-10.

1 **E. The Court should seal Apple’s confidential consumer research**

2 Exhibit 6 to the Pierce Declaration ISO Samsung’s PI Opposition and Exhibits 10-12, 31-
3 32, 38, 72, and 189 to the Wagner Declaration ISO Samsung’s PI Opposition contain Apple
4 confidential consumer research data. (Wheeler Decl. ¶ 15.) At Apple’s request, Samsung has
5 agreed to withdraw these exhibits and refile only the portions that Samsung believes are relevant
6 to the instant motions. (Sabri Decl. ¶ 1 Ex. A.)

7 The Court has denied Apple’s previous motions to seal confidential consumer research
8 data but stayed enforcement of its orders pending appeal and a motion to stay before the appellate
9 court. (*E.g.*, Dkt. No. 1754.)

10 Apple again requests that the Court seal Apple’s confidential consumer research. No
11 competitor has access to Apple’s customer base to conduct the type of in-depth analysis Apple is
12 able to conduct. (Dkt. No. 1496 ¶ 5.) Access to this analysis would be of enormous benefit to
13 Apple’s competitors. (*Id.*) Apple’s competitors will know the importance Apple’s customers
14 place on each of a wide variety of features; what demographics are most satisfied with Apple’s
15 products; and even the preferences of customers in countries around the world, which are
16 irrelevant to this case. (*Id.*) Competitors would be able to observe trends over time. (*Id.*) No
17 other entity can replicate this research. (*Id.*)

18 Also important are the conclusions Apple has drawn from the data. (*Id.* ¶ 6.) Knowing
19 what Apple thinks about its market and where Apple is focusing its attention is extremely
20 valuable to competitors. (*Id.*) If competitors gain access to such documents, they will be able to
21 infer Apple’s next product moves. Knowing where Apple is headed, they can target their efforts
22 to prepare products and marketing counterstrategies in the short term and target product
23 development plans to stay ahead of Apple in the long term. All of this would result in serious
24 competitive harm to Apple. (*Id.*)

25 Because of this extreme sensitivity, distribution of Apple’s internal customer research is
26 very tightly controlled at Apple. (*Id.* ¶ 7.) The documents are stamped as confidential and no
27 internally conducted surveys circulate outside a small, select group of Apple executives. (*Id.*) No
28 iPhone-related surveys or iPad-related surveys are allowed to be distributed to *anyone* outside this

1 group without the personal permission of Apple's Vice President of Product Marketing, Gregory
2 Joswiak. (*Id.*) Thus, the Court should seal Exhibit 6 to the Pierce Declaration ISO Samsung's PI
3 Opposition and Exhibits 10-12, 31-32, 38, 72, and 189 to the Wagner Declaration ISO Samsung's
4 PI Opposition.

5 **II. IF SEALING IS DENIED, THE COURT SHOULD STAY THE EFFECT OF ITS**
6 **ORDER PENDING APPEAL**

7 Apple respectfully requests that if the Court denies sealing of any of the materials that are
8 the subject of this motion, the Court continue its practice of staying effect of its order pending
9 appeal. (Dkt. No. 2047 at 7.) As the Court has previously held, once information is publicly filed,
10 "what once may have been trade secret no longer will be. Thus, the parties may be irreparably
11 injured absent a stay. In contrast, the public interest, which favors disclosure of relevant
12 information in order to understand the proceedings, is not unduly harmed by a short stay." (*Id.*)

13 Dated: October 26, 2012

MORRISON & FOERSTER LLP

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15 By: /s/ Jason R. Bartlett
JASON R. BARTLETT

16 Attorneys for Plaintiff
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