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CO., LTD., SAMSUNG ELECTRONICS  
14 AMERICA, INC. and SAMSUNG  
TELECOMMUNICATIONS AMERICA, LLC  
15

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

18 APPLE INC., a California corporation,

19 Plaintiff,

20 vs.

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

24 Defendants.  
25

CASE NO. 11-cv-01846-LHK

**SAMSUNG'S CORRECTED  
ADMINISTRATIVE MOTION TO FILE  
DOCUMENTS UNDER SEAL**

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1 Pursuant to Civil L.R. 7-11 and 79-5, and General Order No. 62, Defendants Samsung  
2 Electronics Co. Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications  
3 America, LLC (collectively, “Samsung”) hereby bring this administrative motion for an order to  
4 seal:

- 5 1. Samsung’s Opposition to Apple’s Motion for Judgment as a Matter of Law  
6 (Renewed), New Trial, and Amended Judgment;
- 7 2. Exhibits 13 and 24 to the Declaration of John Pierce in Support of Samsung’s  
8 Opposition to Apple’s Motion for Judgment as a Matter of Law (Renewed), New  
9 Trial, and Amended Judgment;
- 10 3. Declaration of Michael Wagner in Support of Samsung’s Opposition to Apple’s  
11 Motion for Judgment as a Matter of Law (Renewed), New Trial, and Amended  
12 Judgment;
- 13 4. Exhibits B and C to the Wagner Declaration;
- 14 5. Samsung’s Opposition to Apple’s Motion for a Permanent Injunction and Damages  
15 Enhancements;
- 16 6. Declaration of Corey Kerstetter (“Kerstetter Declaration”) in Support of Samsung’s  
17 Opposition to Apple’s Motion for a Permanent Injunction and Damages  
18 Enhancement, Apple’s Motion for Judgment as a Matter of Law (Renewed), New  
19 Trial, and Amended Judgment;
- 20 7. Exhibits 1 and 2 to the Kerstetter Declaration;
- 21 8. Declaration of Hee-chan Choi (“Choi Declaration”) in Support of Samsung’s  
22 Opposition to Apple’s Motion for a Permanent Injunction and Damages  
23 Enhancement, Apple’s Motion for Judgment as a Matter of Law (Renewed), New  
24 Trial, and Amended Judgment;
- 25 9. Exhibit 1 to the Choi Declaration;
- 26 10. Declaration of Sam Lucente (“Lucente Declaration”) in Support of Samsung’s  
27 Opposition to Apple’s Motion for a Permanent Injunction and Damages  
28

1 Enhancement, Apple's Motion for Judgment as a Matter of Law (Renewed), New  
2 Trial, and Amended Judgment;

3 11. Exhibits 6, 7, 12-1, 12-2, 13 and 22-43 to the Declaration of John M. Pierce in  
4 Support of Samsung's Opposition to Apple's Motion for a Permanent Injunction  
5 and Damages Enhancement;

6 12. Declaration of Stephen Gray in Support Samsung's Opposition to Apple's Motion  
7 for a Permanent Injunction and Damages Enhancement and Exhibit 2 thereto;

8 13. Declaration of Michael Wagner in Support of Samsung's Opposition to Apple's  
9 Motion for a Permanent Injunction and Damages Enhancement and Exhibits 2, 9-  
10 13, 28-32, 34, 37-38, 47, 54, 71-72, 83-87, 92-93, 183, 189, 191, 195, 197-199,  
11 201-204, 206-208, and 212 thereto.

12 14. Declaration of Tülin Erdem in Support of Samsung's Opposition to Apple's Motion  
13 for a Permanent Injunction and Damages Enhancement;

14 15. Declaration of Yoram (Jerry) Wind;

15 16. Declaration of R. Sukumar in Support of Samsung's Opposition to Apple's Motion  
16 for a Permanent Injunction and Damages Enhancement.

17 Samsung has filed a declaration in support of this Administrative Motion to Seal. As  
18 discussed further below, the Court has already ordered that some of the documents cited above be  
19 sealed and some of the Samsung information included in the request is the same category of  
20 information that this Court has previously ruled may be sealed. For the reasons stated below,  
21 Samsung requests that the Court order the information filed under seal, or if the Court denies  
22 Samsung's motion to seal, Samsung respectfully requests that the Court stay the disclosure of any  
23 information until a ruling by the Federal Circuit on the related appeal. *See* Dkt. No. 2047 at 6-7.

24 **Confidential Apple Information**

25 Samsung's Opposition to Apple's Motion for Judgment as a Matter of Law (Renewed),  
26 New Trial, and Amended Judgment, Exhibit 13 to the Declaration of John Pierce in Support of  
27 Samsung's Opposition to Apple's Motion for Judgment as a Matter of Law (Renewed), New Trial,  
28 and Amended Judgment, Exhibit C to the Declaration of Michael Wagner in Support of

1 Samsung's Opposition to Apple's Motion for Judgment as a Matter of Law (Renewed), New Trial,  
2 and Amended Judgment, Samsung's Opposition to Apple's Motion for a Permanent Injunction  
3 and Damages Enhancements, Exhibits 6, 7, 12-1, 12-2, 13 and 22-43 to the Declaration of John M.  
4 Pierce in Support of Samsung's Opposition to Apple's Motion for a Permanent Injunction and  
5 Damages Enhancement, Exhibits 9-13, 28-32, 34, 38, 47, 71-72, 83-87, 92-93, 189, 191, 199, 201-  
6 204, 206, 208, and 212 to the Declaration of Michael Wagner in Support of Samsung's Opposition  
7 to Apple's Motion for a Permanent Injunction and Damages Enhancement, the Declaration of  
8 Tülin Erdem in Support of Samsung's Opposition to Apple's Motion for a Permanent Injunction  
9 and Damages Enhancement; the Declaration of Yoram (Jerry) Wind, and the Declaration of R.  
10 Sukumar in Support of Samsung's Opposition to Apple's Motion for a Permanent Injunction and  
11 Damages Enhancement contain materials that Apple has designated as CONFIDENTIAL or  
12 CONFIDENTIAL – ATTORNEYS' EYES ONLY under the Protective Order. Samsung expects  
13 that Apple will file the declaration required by Civil Local Rule 79-5(d) establishing these  
14 documents as sealable.

15 **Confidential Third Party Information**

16 The Court has previously ordered that part of Exhibit 24 to the Declaration of John Pierce  
17 in Opposition to Apple's Motion for Judgment as a Matter of Law (Renewed), New Trial, and  
18 Amended Judgment sealed because it contains confidential licensing information from third  
19 parties. Dkt. No. 1649 at 22:15-17 ("Consistent with Electronic Arts, the Court will grant  
20 motions to seal information in the 'Monetary Consideration' column of the PX77 summary and  
21 the 'Payments' column of the DX630 summary."). This same portion of DX 630 should remain  
22 sealed because of the compelling interest previously identified by the Court.

23 Exhibits 183, 197, and 198 to the Declaration of Michael Wagner in Support of Samsung's  
24 Opposition to Apple's Motion for a Permanent Injunction and Damages Enhancement consist of  
25 market share data, including spreadsheets and analyses, prepared by third-party Strategy  
26 Analytics, Inc. Strategy Analytics' reports include information about the mobile devices market  
27 and Strategy Analytics' business relies on selling the reports. (Declaration of Prashanth  
28 Chennakesavan in Support of Samsung's Corrected Administrative Motion to File Under Seal ¶¶

1 4.) Samsung purchased the reports from Strategy Analytics and has a contractual obligation to  
2 prevent dissemination of the information. (*Id.* ¶ 5.) Disclosure of Strategy Analytics' full  
3 report and spreadsheets could be extremely harmful to Strategy Analytics' business as it would no  
4 longer be able to sell the reports to others. As the Court has recognized, compelling reasons exist  
5 to seal market research reports prepared by third parties. (*See* Dkt. No. 2047 at 4-5.)

#### 6 **Confidential Samsung Information**

7 The Choi Declaration, Exhibit 1 thereto, the Kerstetter Declaration, Exhibit 1 thereto, and  
8 the Lucente Declaration contain information about unreleased products and future business plans  
9 including projections based on Samsung's operating profits regarding individual products which  
10 could cause serious competitive harm if disclosed publicly. Samsung's Opposition to Apple's  
11 Motion for a Permanent Injunction and Damages Enhancement also contains the same type of  
12 confidential future business planning information. Pursuant to the Court's guidance, this  
13 information satisfies the "compelling reasons" standard. Dkt. No. 1649 at 7-8 ("Although the  
14 Court has determined that financial data alone is not sealable, these documents contain  
15 substantially more than data alone. Apple's financial analysis and strategy for future corporate  
16 plans have the potential to cause considerable competitive harm to Apple if publically disclosed.  
17 Accordingly, the Court finds that the risk of 'harm [to Apple's] competitive standing' substantially  
18 outweighs the public's interest in disclosure and therefore grants Apple's motion to seal. *See*  
19 *Electronic Arts*, 298 Fed. App'x at 569 (citing *Nixon*, 543 U.S. at 598)"); *see also Bauer Bros.*  
20 *LLC v. Nike, Inc.*, 2012 WL 1899838, at \*2 (S.D. Cal. May 24, 2012) (finding "compelling  
21 reasons" to seal "Nike's confidential business materials, including marketing strategies").

22 The Declaration of Michael Wagner in Support of Samsung's Opposition to Apple's  
23 Motion for Judgment as a Matter of Law (Renewed), New Trial, and Amended Judgment, Exhibit  
24 B to the Wagner Declaration and Exhibit 2 to the Kirstetter Declaration contain recent detailed  
25 sales information that breaks down sales by product and specific time periods that could cause  
26 competitive harm if disclosed. Samsung's Opposition to Apple's Motion for Judgment as a  
27 Matter of Law (Renewed), New Trial, and Amended Judgment discusses the same type of  
28 information. Courts in the Ninth Circuit consistently find that the risk of harm from the release

1 of just this sort of information is sufficient to meet the “compelling reasons” test. *Bean v. John*  
2 *Wiley & Sons, Inc.*, No. CV 11-08028-PCT-FJM, 2012 WL 1078662, \*5-6 (D. Ariz. Mar. 30,  
3 2012) (concluding that a company had established “compelling reasons” by showing that  
4 competitors could use its production data, revenue information, and “sales and production  
5 numbers” to calibrate their pricing and distribution methods so as to undercut the defendant in the  
6 market); *TriQuint Semiconductor, Inc. v. Avago Techs., Ltd.*, No. CV 09-1531-PHX-JAT, 2011  
7 WL 6182346, \*3-7 (D. Ariz. Dec. 13, 2011) (release of documents showing, *inter alia*, sales  
8 volumes, market analysis, capital expenditures, cost, and manufacturing capacity would cause  
9 competitive harm and thus met the “compelling reasons” standard).

10 Exhibits 2, 37, 195, and 207 to the Declaration of Michael Wagner in Support Samsung’s  
11 Opposition to Apple’s Motion for a Permanent Injunction and Damages Enhancement and the  
12 Declaration itself also contain highly detailed and sensitive strategy, future business planning  
13 information, and confidential financial information. As discussed above, public disclosure of this  
14 information risks considerable financial harm to Samsung. Dkt. No. 1649 at 7-8.

15 The Declaration of Stephen Gray in Support Samsung’s Opposition to Apple’s for a  
16 Permanent Injunction and Damages Enhancement and Exhibit 2 thereto contain Samsung source  
17 code algorithms and descriptions of the operation of the confidential source code. This  
18 information poses a competitive harm to Samsung as competitors can re-create the features found  
19 in Samsung’s products using the information contained in the documents. “Compelling reasons”  
20 exist where the documents to be sealed are “sources of business information that *might harm a*  
21 *litigant’s competitive standing.*” *Nixon*, 435 U.S. at 598 (emphasis added).

22 Pursuant to General Order No. 62, Samsung’s entire filing will be lodged with the Court  
23 for *in camera* review and served on all parties.

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1 DATED: October 31, 2012

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

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