

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.)	ORDER RE: MOTION FOR LEAVE TO
)	FILE HTC LICENSE; MOTION TO FILE
SAMSUNG ELECTRONICS CO., LTD., A)	UNDER SEAL
Korean corporation; SAMSUNG)	
ELECTRONICS AMERICA, INC., a New York)	
corporation; SAMSUNG)	
TELECOMMUNICATIONS AMERICA, LLC,)	
a Delaware limited liability company,)	
)	
Defendants.)	

Before the Court is Samsung’s motion for leave to file the Declaration of Robert J. Becher Regarding Samsung’s Submission of HTC Settlement Agreement In Support of Opposition to Apple’s Motion for Permanent Injunction and for Damages Enhancement (“motion for leave to file HTC license”). ECF No. 2177-2. Also before the Court is Samsung’s motion to file under seal both portions of the motion for leave to file HTC license, and the license agreement itself. Because the parties require a ruling on these motions quickly, the Court will keep its discussion and analysis brief.

The HTC agreement did not exist until November 11, 2012, and Samsung did not receive it until Judge Grewal granted Samsung’s motion to compel on November 21, 2012, ECF No. 2158 and Apple produced the document five days later. The Court agrees that the license agreement may be relevant to the permanent injunction analysis, and that Samsung could not have presented it

1 sooner. Accordingly, Samsung's motion for leave to file HTC license is GRANTED. Further, the
 2 Court finds that the relevance of the agreement can be adequately addressed at the December 6,
 3 2012 hearing, without further briefing.

4 As regards the motion to file under seal, this Court has repeatedly explained that only the
 5 pricing and royalty terms of license agreements may be sealed. *See, e.g.*, ECF Nos. 1649, 2168.
 6 Only these terms, and not the rest of the agreement, meet the "compelling reasons" standard
 7 articulated by the Ninth Circuit for sealing filings related to dispositive motions and trial. *See*
 8 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). There are
 9 compelling reasons to seal pricing and royalty terms, as they may place the parties to the agreement
 10 at a disadvantage in future negotiations, but there is nothing in the remainder of the agreement that
 11 presents a sufficient risk of competitive harm to justify keeping it from the public. Accordingly,
 12 Samsung's motion to seal is GRANTED with regard to the pricing and royalty terms of the
 13 agreement only, and DENIED with regard to the rest of the agreement.

14 Samsung also seeks to redact the motion for leave to file HTC license. However, none of
 15 Samsung's proposed redactions cover information that is properly sealable under the "compelling
 16 reasons" standard. The proposed redactions cover only: (1) the fact that Apple has made an
 17 argument regarding license agreements in its permanent injunction motion; and (2) which patents
 18 are covered by the agreement. Apple has already articulated its argument concerning license
 19 agreements in two publically filed documents. *See* ECF Nos. 1982-1 at 10; 2127-2 at 7. Thus, this
 20 information is not confidential. And the Court has just explained that the only sealable terms of the
 21 license agreement are the payment and royalty terms. Thus, the list of patents covered by the
 22 agreement does not meet the "compelling reasons" standard. Accordingly, Samsung's motion to
 23 file under seal is DENIED with regard to the proposed redactions to the motion for leave to file
 24 HTC license.

25 **IT IS SO ORDERED.**

26 Dated: December 3, 2012

27 
 28 LUCY H. KOH
 United States District Judge