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AMERICA, INC. and SAMSUNG
16 TELECOMMUNICATIONS AMERICA, LLC

17
18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

20 APPLE INC., a California corporation,

21 Plaintiff,

22 vs.

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

26 Defendants.
27

CASE NO. 11-cv-01846-LHK

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

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 (“STA”) (collectively, “Samsung”) hereby bring this renewed administrative
 4 motion for an order to seal:

- 5 1. Exhibit 2 to the Declaration of Michael Wagner in Support of Samsung’s
 6 Opposition to Apple’s Motion for a Permanent Injunction and Damages
 7 Enhancement (“PI Opposition”) (“Wagner PI Declaration”);
- 8 2. Samsung’s Opposition to Apple’s Motion for Judgment as a Matter of Law
 9 (Renewed), New Trial, and Amended Judgment (“JMOL Opposition”);
- 10 3. The Declaration of Michael Wagner in Support of Samsung’s JMOL Opposition
 11 (“Wagner JMOL Declaration”) and Exhibit B thereto; and
- 12 4. The Declaration of Corey Kerstetter in Support of Samsung’s PI Opposition and
 13 JMOL Opposition (“Kerstetter Declaration”) and Exhibit 2 thereto.

14 Should the Court decline to seal the documents listed above, Samsung respectfully moves
 15 for a stay pending the Federal Circuit’s resolution of Samsung’s appeal of the Court’s August 9,
 16 2012 sealing order. Apple does not oppose Samsung’s renewed motion. (Declaration of Jon
 17 Steiger, Ex. 1.)

18 In support of its PI Opposition and JMOL Opposition, Samsung filed several documents
 19 that included confidential information about future business plans, source code, and detailed
 20 financial information. (See Dkt. No. 2064.) The Court granted in part and denied in part
 21 Samsung’s motion to. (See Dkt. No. 2168.)

22 **Good Cause¹ and Compelling Reasons Exist to Seal Information about Unreleased**
 23

24 ¹ While the “strong presumption of access to judicial records applies fully to dispositive
 25 pleadings” since the public has a strong interest in access where a pleading involves the
 26 “*resolution* of a dispute on the merits,” the presumption of access does not “apply with equal force
 27 to non-dispositive materials.” *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179-80
 28 (9th Cir. 2006) (emphasis added). Apple PI and JMOL motions are non-dispositive. Thus, a
 “good cause” showing is sufficient to seal the documents at issue here. *Id.*; see also *In re
 National Sec. Agency Telecommunications Records Litig.*, 2007 WL 549854, at *3-*4 (N.D. Cal.
 (footnote continued)

1 **Products and Future Business Plans**

2 Exhibit 2 to the Wagner PI Declaration and Samsung's JMOL Opposition contain
 3 information about unreleased products and future business plans. While the Court granted in part
 4 Samsung's request to seal a portion to seal Exhibit 2 to the Wagner PI Declaration, it held that no
 5 information beyond Schedule 4.2 may be sealed. (Dkt. No. 2168 at 11.) The Court denied
 6 Samsung's request to seal its JMOL Opposition. (*Id.* at 12.)

7 Schedule 4.1 of Exhibit 2 to the Wagner PI Declaration and Page 28 of Samsung's JMOL
 8 Opposition contain information about Samsung's future business strategies, including Samsung's
 9 future projected sales and information about unreleased products. As the Court has noted,
 10 "[i]nformation about Samsung's unreleased products and future strategies [risks] harm [to
 11 Samsung's] competitive standing, as competitors could use the information to position themselves
 12 to undercut Samsung." (Dkt. No. 2168 at 10 (internal quotation omitted); *see also In re*
 13 *Electronic Arts*, 298 Fed. App'x 568, 569 (9th Cir. 2008).) Schedule 4.1 includes the same type
 14 of product line-specific projected sales and expected per-unit operating profit information included
 15 in Schedule 4.2 and Samsung's JMOL Opposition includes the same type of specific information
 16 about unreleased products and future business plans included in the Declarations of Hee-Chan
 17 Choi and Corey Kerstetter. Schedule 4.1 and Samsung's JMOL Opposition should therefore be
 18 sealed for the same reasons. (*See* Dkt. No. 2168 at 10-11.)

19 **Good Cause and Compelling Reasons Exist to Seal Samsung's Confidential Financial**
 20 **Information**

21 Pages 27-28 of Samsung's JMOL Opposition; the Wagner JMOL Declaration and Exhibit
 22 B thereto; paragraph 18 of the Kerstetter Declaration²; and Exhibit 2 to the Kerstetter Declaration
 23 contain product line-specific recent sales information for various products and per-unit operating
 24

25 _____
 25 Nov. 23, 2007) (noting that a motion for a preliminary injunction is non-dispositive and that the
 26 "good cause" standard applies to a motion to seal attached documents).

27 ² The Court granted Samsung's request to seal other portions of the Kerstetter Declaration
 27 that contain information about unreleased products and future business plans. (Dkt. No. 2168 at
 28 10-11.)

1 profits. This information could be used by competitors to undercut Samsung's pricing and
2 marketing strategies and should therefore be sealed. *See, e.g., Bean v. John Wiley & Sons, Inc.*,
3 2012 WL 1078662, *5-6 (D. Ariz. Mar. 30, 2012) (concluding that a company had established
4 "compelling reasons" by showing that competitors could use its production data, revenue
5 information, and "sales and production numbers" to calibrate their pricing and distribution
6 methods so as to undercut the defendant in the market); *TriQuint Semiconductor, Inc. v. Avago*
7 *Techs., Ltd.*, 2011 WL 6182346, *3-7 (D. Ariz. Dec. 13, 2011) (release of documents showing,
8 inter alia, sales volumes, market analysis, capital expenditures, cost, and manufacturing capacity
9 would cause competitive harm and thus met the "compelling reasons" standard).

10 **The Court Should Grant Samsung's Motion to Stay**

11 In denying Samsung's request to seal documents that contained confidential financial
12 information without prejudice, the Court noted that it does not consider product-specific sales
13 information sealable under the compelling reasons standard. Dkt. No. 2168 at 12-13. Samsung
14 has appealed a previous order denying Samsung's motion to seal confidential financial
15 information, including product-specific sales and profit data, to the Federal Circuit. (*See* Dkt.
16 Nos. 1649, 1722; *see also Apple Inc. v. Samsung Elecs. Co., Ltd., et al.*, Case No. 2012-1600, -
17 1606 (Fed. Cir.) Dkt. Nos. 6 at 15-18; 39-1 at 2; and 46-1 at 8) As the Court has previously
18 noted, should the Federal Circuit disagree with the Court's assessment and hold that certain types
19 of financial information are sealable, "the parties will be deprived of any remedy if this Court does
20 not stay its Order. When the information is publicly filed, what once may have been trade secret
21 no longer will be." (Dkt. No. 2168 at 8-9.) Samsung respectfully requests that the Court stay
22 the effect of any order denying Samsung's motion to seal confidential financial information
23 pending the Federal Circuit's resolution of Samsung's appeal of the Court's August 9 order.

24 **Conclusion**

25 For the foregoing reasons, Samsung respectfully requests that the Court grant Samsung's
26 renewed motion to seal, or, should the court decline Samsung's request to seal, grant a stay
27 pending the Federal Circuit resolution of Samsung's appeal of the August 9 order.

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1 DATED: December 3, 2012

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