

1 MICHAEL B. LEVIN (SBN: 172329)
 mlevin@wsgr.com
 2 WILSON SONSINI GOODRICH & ROSATI
 Professional Corporation
 3 650 Page Mill Road
 Palo Alto, CA 94304-1050
 4 Telephone: (650) 493-9300
 Facsimile: (650) 565-5100
 5
 Attorneys for Non-Parties
 6 INTERDIGITAL HOLDINGS, INC.,
 INTERDIGITAL TECHNOLOGY
 7 CORPORATION, and IPR LICENSING, INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION
 11

12	APPLE INC., a California Corporation,	)	CASE NO.: 11-CV-01846-LHK
13	Plaintiff,)	
14	v.	)	MOTION BY NON-PARTIES
15	SAMSUNG ELECTRONICS CO., LTD., a	)	INTERDIGITAL HOLDINGS, INC.,
16	Korean corporation; SAMSUNG	)	INTERDIGITAL TECHNOLOGY
17	ELECTRONICS AMERICA, INC., a New York	)	CORPORATION, AND IPR
18	corporation; SAMSUNG	)	LICENSING, INC. TO SEAL
19	TELECOMMUNICATIONS AMERICA, LLC, a	)	PATENT LICENSE AGREEMENT
20	Delaware limited liability company,	)	WITH APPLE INC.
21	Defendants.	)	[Civ. L.R. 79-5]
22		)	Date: TBD
23		)	Courtroom: 5, 4th Floor
24		)	Magistrate: Paul S. Grewal

24 **I. INTRODUCTION**

25 Pursuant to Civil Local Rules 7-11 and 79-5, non-parties InterDigital Holdings, Inc.,
 26 InterDigital Technology Corporation, and IPR Licensing, Inc. (collectively, "InterDigital") file
 27 this administrative motion for an order to seal the Patent License Agreement between
 28 InterDigital Technology Corporation, IPR Licensing, Inc., and Apple Inc. ("the Apple PLA")

1 because the agreement contains highly confidential, sensitive business information of
2 InterDigital.¹ The disclosure of the Apple PLA to InterDigital's current or prospective licensees,
3 competitors, or the general public could cause substantial harm to InterDigital's bargaining and
4 competitive position.

5 InterDigital respectfully submits that, as shown below, good cause exists to grant this
6 motion. This motion is supported by the Declaration of Corina I. Cacovean and the Declaration of
7 Ranae McElvaine, filed herewith.

8 **II. BACKGROUND**

9 InterDigital learned from a letter sent by Apple's counsel on February 12, 2013 that this
10 Court, by Magistrate Judge Grewal's Order dated February 1, 2013, denied without prejudice
11 Apple's request to maintain the Apple PLA under seal in its entirety. *See* Declaration of Corina I.
12 Cacovean in Support of InterDigital's Motion to Seal Apple PLA filed herewith ("Cacovean
13 Decl.") ¶ 2. InterDigital is aware of Apple's Renewed Motion to Seal filed on February 15, 2013
14 that seeks, among other things, that Apple's agreements with third parties, including its agreement
15 with InterDigital, be sealed in full. *See* Dkt. No. 2228 at 7-10; Cacovean Decl. ¶ 3. InterDigital
16 also understands that Apple requested that the Court defer ruling on Apple's motion, at least with
17 respect to third-party information, for an additional two weeks in order to afford third parties an
18 opportunity to make a submission to the Court. Dkt. No. 2228 at 10; Cacovean Decl. ¶ 3.

19 InterDigital further understands that the Apple PLA was attached to the Price Declaration
20 in Support of Samsung's Motion to Strike, which is a nondispositive motion. *See* Dkt. No. 2228 at
21 9; Dkt. No. 936. This Court has previously sealed in full license agreements attached as Exhibits
22 2-6 and 13 to the Price Declaration in Support of Samsung's Reply in Support of Its Motion to
23 Strike because these "agreements contain a whole host of terms (e.g. termination conditions, side-
24 agreements, waivers) that are irrelevant to matters in this litigation" and "disclosure of these full
25

26 ¹ InterDigital understands that a copy of the Apple PLA was filed under seal as an exhibit to
27 the Price Declaration in Support of Samsung's Motion to Strike. *See* Dkt. No. 936. Unless
28 requested by the Court, InterDigital will not file an additional copy of the Apple PLA.

1 documents could result in significant competitive harm to the licensing parties as it would provide
2 insight into the structure of their licensing deals, forcing them into an uneven bargaining position
3 in future negotiations.” Dkt. No. 1649 at 16; Cacovean Decl. ¶ 4.

4 **III. ARGUMENT**

5 **A. This Motion Should Be Decided Under the “Good Cause” Standard of Rule** 6 **26(c)**

7 In the Court’s Order Granting-in-Part and Denying-in-Part Apple’s and Samsung’s
8 Administrative Motions to File Documents under Seal, the Court held that, in contrast to requests
9 for sealing records in support of dispositive motions where the “compelling reasons” standard for
10 overcoming the presumption of public access applies, “[r]ecords attached to nondispositive
11 motions, however, are not subject to the strong presumption of access. Because the documents
12 attached to nondispositive motions ‘are often unrelated, or only tangentially related, to the
13 underlying cause of action,’ parties moving to seal must meet the lower ‘good cause’ standard of
14 Rule 26(c). As with dispositive motions, the standard applicable to nondispositive motions
15 requires a ‘particularized showing’ that ‘specific prejudice or harm will result’ if the information
16 is disclosed.” *Id.* at 2 (footnotes omitted). Additionally, parties moving to seal must comply
17 with the procedures established by Civil Local Rule 79-5 allowing sealing orders only where the
18 parties have “establishe[d] that the document or portions thereof is privileged or protectable as a
19 trade secret or otherwise entitled to protection under the law.” *Id.* at 3.

20 The Court further held that the parties’ motions to seal related to non-dispositive motions
21 such that “the lower ‘good cause’ standard therefore applies.” 2/1/2013 Order (Dkt. No. 2222) at
22 3. The Apple PLA is one of the documents that were the subject of the motions to seal, and as a
23 result this motion should be decided under the “good cause” standard.

24 **B. Good Cause Requires Sealing the Apple PLA**

25 Here, good cause exists to maintain the Apple PLA under seal. The Apple PLA contains
26 competitively sensitive and highly confidential business information, including (i) specific, non-
27 public terms pertaining to monetary consideration and other payment-related terms and (ii)
28 specific, non-public terms concerning InterDigital’s licensing strategies and negotiations with

1 Apple. *See* Declaration of Ranae McElvaine in Support of InterDigital’s Motion to Seal Apple
2 PLA filed herewith (“McElvaine Decl.”) at ¶ 3.

3 InterDigital has previously established that the financial terms of the Apple PLA are
4 highly sensitive, trade secret information, the disclosure of which to parties involved in present
5 or future licensing negotiations would be damaging and that this sensitivity required protection
6 under a “compelling reasons” standard. *See* InterDigital’s Emergency Motion to Seal (Dkt. No.
7 1334; citing cases) and 8/9/2012 Order (Dkt. No. 1649) at 23-24. The present motion and
8 accompanying Declaration of Ranae McElvaine demonstrate specifically why the terms of the
9 Apple PLA as a whole constitute trade secret information or otherwise satisfy the lower “good
10 cause” standard for protection from public disclosures.

11 The terms of the Apple PLA are highly sensitive to InterDigital because they reflect the
12 parties’ valuation of InterDigital’s intellectual property and other license terms; if those terms
13 were not kept confidential, other companies would use this information unfairly to increase their
14 leverage in their own negotiations with InterDigital. McElvaine Decl. ¶ 4. During negotiations
15 for patent licenses, InterDigital and its prospective licensees negotiate the relative value of the
16 patent portfolios at issue as well as the values of other terms in the agreement. *Id.* ¶ 5. The
17 patents that are licensed under each particular agreement, as well as the relative value and the
18 circumstances of any given license vary from party to party. *Id.* Public disclosure of the Apple
19 PLA would cause substantial harm to InterDigital’s bargaining and competitive position. *Id.* ¶ 6.

20 Moreover, the competition for revenues within the highly competitive wireless
21 communications industry creates a business environment in which highly confidential
22 information, including pricing information and negotiation strategies, must be diligently
23 protected to enable InterDigital to maintain competitive viability. *Id.* InterDigital derives a large
24 portion of its revenues from its licensing activities. *Id.* ¶ 7. The terms and conditions to which
25 InterDigital subjects its licensees are business decisions that affect InterDigital’s revenues. *Id.*
26 Disclosure of the Apple PLA could result in significant competitive harm to InterDigital as it
27 would provide insight into the structure of its licensing deals, forcing it into an uneven
28 bargaining position in ongoing and future negotiations. *Id.* ¶ 8. This Court has previously sealed

1 in full license agreements in this case because these “agreements 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 of their licensing deals,
5 forcing them into an uneven bargaining position in future negotiations.” 8/9/2012 Order (Dkt.
6 No. 1649) at 16; Cacovean Decl. ¶ 4. Accordingly, good cause exists for sealing the Apple PLA
7 in full.

8 **III. CONCLUSION**

9 For the foregoing reasons, InterDigital respectfully requests the Court to enter
10 InterDigital’s Proposed Order to seal the Apple PLA.

11
12 Dated: February 28, 2013

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

13
14 By: /s/ Michael B. Levin
Michael B. Levin

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16 Attorneys for Non-Parties
INTERDIGITAL HOLDINGS, INC.,
17 INTERDIGITAL TECHNOLOGY
CORPORATION, and IPR LICENSING, INC.
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