

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
Charles K. Verhoeven (Cal. Bar No. 170151)
2 charlesverhoeven@quinnemanuel.com
50 California Street, 22nd Floor
3 San Francisco, California 94111
Telephone: (415) 875-6600
4 Facsimile: (415) 875-6700

5 Kathleen M. Sullivan (Cal. Bar No. 242261)
kathleensullivan@quinnemanuel.com
6 Kevin P.B. Johnson (Cal. Bar No. 177129)
kevinjohnson@quinnemanuel.com
7 Victoria F. Maroulis (Cal. Bar No. 202603)
victoriamaroulis@quinnemanuel.com
8 555 Twin Dolphin Drive, 5th Floor
Redwood Shores, California 94065-2139
9 Telephone: (650) 801-5000
Facsimile: (650) 801-5100

10 Susan R. Estrich (Cal. Bar No. 124009)
susanestrich@quinnemanuel.com
11 Michael T. Zeller (Cal. Bar No. 196417)
michaelzeller@quinnemanuel.com
12 865 S. Figueroa St., 10th Floor
13 Los Angeles, California 90017
Telephone: (213) 443-3000
14 Facsimile: (213) 443-3100

15 Attorneys for SAMSUNG ELECTRONICS CO.,
LTD., SAMSUNG ELECTRONICS AMERICA,
16 INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19
20 APPLE INC., a California corporation,

21 Plaintiff,

22 vs.

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

27 Defendant.
28

CASE NO. 11-cv-01846-LHK

**RENEWED ADMINISTRATIVE MOTION
TO FILE DOCUMENTS UNDER SEAL**

1 Pursuant to Civil Local Rules 7-11 and 79-5, and General Order No. 62, Samsung
2 Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications
3 America, LLC (collectively, “Samsung”) hereby bring this renewed administrative motion for an
4 order to seal documents submitted in connection with Samsung’s oppositions to Apple’s Motion to
5 Exclude Testimony of Samsung’s Experts (Apple’s *Daubert* Motion) and Motion to Strike
6 Portions of Samsung’s Expert Reports (*see* Dkt. No. 999).

7 **RELIEF REQUESTED**

8 Samsung requests an order granting Samsung’s motion to file under seal:

- 9 1. Exhibit O to the Martin Declaration in Support of Samsung’s Opposition to
10 Apple’s *Daubert* Motion (“Martin Declaration”) (Dkt. No. 999); and
- 11 2. Exhibits J, BB, EE, and FF to the Ward Declaration in Support of Samsung’s
12 Opposition to Apple’s Motion to Strike (“Ward Declaration”) (Dkt. No. 1014).

13 Should the Court find that information included in these documents is not sealable,
14 Samsung requests that the Court deny Samsung’s motion to seal documents that include
15 Samsung’s confidential financial information—revenues, pricing, cost, and profit data—without
16 prejudice to Samsung “refiling [a motion to seal] after resolution of the [parties’ appeals from the
17 Court’s August 9 Order regarding motions to seal] by the Federal Circuit,” as this Court has done
18 in the past, and stay disclosure of the documents pending the Federal Circuit’s resolution of the
19 parties’ appeals. *See* Dkt. No. 2168 at 9.

20 **STATEMENT OF FACTS**

21 On March 17, 2013, the Court denied Samsung’s Administrative Motion to File
22 Documents Under Seal related to Samsung’s oppositions to Apple’s *Daubert* motion and Motion
23 to Strike. Dkt. No. 2278. The Court instructed the parties to “carefully scrutinize the documents
24 they seek to seal” and ordered Samsung to file a renewed motion to seal within fourteen days. *Id.*
25 at 2. After conferring with Apple and third parties, Samsung now moves to seal five documents.

26 **Documents that Include Apple’s or Third-Party Confidential Information**

27 Portions of Exhibit O to the Martin Declaration and Exhibits J, EE and FF to the Ward
28 Declaration include information Apple has designated confidential. Exhibit BB to the Ward

1 Declaration includes third-party confidential information. Samsung expects that Apple and third
 2 parties will file declarations in support of this motion within seven days establishing that portions
 3 of these documents are sealable as required by Civil Local Rule 79-5(d).

4 **Documents that Include Samsung's Confidential Information**

5 Exhibit O to the Martin Declaration and Exhibits EE and FF to the Ward Declaration also
 6 include Samsung's highly confidential financial information. Exhibit O to the Martin Declaration
 7 is the Corrected Expert Report of Michael J. Wagner dated April 20, 2012, Exhibit EE to the Ward
 8 Declaration is the Expert Report of Michael J. Wagner dated April 16, 2012, and Exhibit FF to the
 9 Ward Declaration is the Supplemental Expert Report of Terry L. Musika dated May 8, 2012.

10 Exhibit O to the Martin Declaration and Exhibit FF to the Ward Declaration are identical to two
 11 documents that the Court found may not be sealed in its July 17, 2012 and August 9, 2012 orders
 12 (Dkt. Nos. 1256, 1649).¹ Samsung has appealed to the Federal Circuit from those orders.

13 Exhibit EE to the Ward Declaration is nearly identical Exhibit O to the Martin Declaration and is
 14 subject to the same analysis.

15 Samsung now seeks to seal the same materials it identified in its appeal to the Federal
 16 Circuit. Specifically, Samsung seeks to seal:

17 **Exhibit O to the Martin Declaration:** pages 5 (data included in the tables), 91
 18 (line 19), 92 (line 1 and the "Quantity" and "ASP" columns), 106 (the "Cost
 19 Value per Unit" and "Musika Cost Value per Unit" columns), 107 (lines 10, 12-
 20 15, 17-18, and nn. 552-53 and 555-56), 114 (lines 1-2), 138 (n. 680), 140-41 (data
 21 included in the tables), 155 (data included in the table), 162 ("Design Around
 22 Costs" column), 186 (lines 18-19), 197 (lines 5-6), 204 (lines 1-4), and 211-12
 23 (the "Design Around Costs," "Units" and "Royalties Due" columns);

24 **Exhibit EE to the Ward Declaration:** pages 5 (data included in the tables), 90
 25 (line 19), 91 (line 1 and the "Quantity" and "ASP" columns of the table), 105 (the
 26 "Cost Value per Unit" and "Musika Cost Value per Unit" columns), 106 (lines 10,
 27 12-15, 17-18, and nn. 552-53 and 555-56), 113 (lines 1-2), 137 (n. 677), 139-40
 28 (data included in the tables), 153 (data included in the table), 160 ("Design
 Around Costs" column), 183 (lines 4-5), 193 (lines 5-6), 199 (lines 17-19), 200

¹ Exhibit O to the Martin declaration is identical to Exhibit B to the Wagner Declaration in Support of Samsung's Reply in Support of its Motion to Strike, while Exhibit FF to the Ward Declaration is identical to Exhibit B to the Musika Declaration in Support of Apple's Opposition to Samsung's *Daubert* motion.

1 (line 1), and 206-08 (the “Design Around Costs,” “Units” and “Royalties Due”
2 columns); and

3 **Exhibit FF to the Ward Declaration:** pages 12 (line 20), 13 (lines 11, 16 & 19-
4 20), and 18 (line 14), and Exhibits 17-S (except “Reasonable Royalty” column),
5 17.3-S, 17.4-S, 18-S (except “Reasonable Royalty” column), 18.2-S, 18.3-S, 36,
6 37-S (information below the line indicating worldwide revenue), 38-S
7 (information below the line indicating worldwide revenue), 40-S (“Utility
8 Patents” reference values for Samsung smartphones and tablets & nn. 3-4), 49-S,
9 and 51-S to 51.2-S.

10 **ARGUMENT**

11 **I. THE “GOOD CAUSE” STANDARD APPLIES**

12 The three documents Samsung seeks to seal were submitted in support of
13 Samsung’s oppositions to Apple’s *Daubert* motion and Motion to Strike. While the Ninth Circuit
14 recognizes that a “strong presumption” or access to judicial records relating to “the resolution of a
15 dispute on the merits,” the presumption does not apply to judicial records that are “unrelated, or
16 only tangentially related” to a party’s claims. *Kamakana v. City and County of Honolulu*, 447
17 F.3d 1172, 1179 (2006). Documents submitted in connection with non-dispositive motions may
18 be sealed upon a showing of “good cause.” *Id.* at 1179-80 (internal quotation marks omitted);
19 *accord Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135-36 (9th Cir. 2003); *Phillips*
20 *v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). Neither Apple’s *Daubert* motion nor
21 its Motion to Strike were dispositive; Apple would have been able to pursue its claims and
22 damages theories even if the Court had excluded the testimony of Wagner, Samsung’s damages
23 expert. Thus, the documents at issue here are sealable upon a showing of “good cause.”

24 **II. “GOOD CAUSE” AND “COMPELLING REASONS” EXIST TO SEAL 25 CONFIDENTIAL FINANCIAL INFORMATION**

26 Rule 26(c) permits a court to “protect a party or person from annoyance, embarrassment,
27 oppression, or undue burden or expense” by, among other things, “requiring that a trade secret *or*
28 other confidential research, development, or *commercial information* not be revealed or revealed
only in a specified way.” Fed. R. Civ. P. 26(c) (emphasis added).

“The most commonly accepted definition of trade secrets,” *Aronson v. Quick Point Pencil
Co.*, 440 U.S. 257, 266 (1979), which the Ninth Circuit has applied in the sealing context, *In re*

1 *Elec. Arts, Inc.*, 298 Fed. App'x 568, 569 (9th Cir. 2008) (unpublished), is found in comment b to
2 section 757 of the first Restatement of Torts. *Accord, e.g., Union Oil Co. of Cal. v. Fed. Power*
3 *Comm'n*, 542 F.2d 1036, 1044 (9th Cir. 1976); *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir.
4 1972). The Restatement defines “trade secret” as “any formula, pattern, device or compilation of
5 information which is used in one’s business, and which gives him *an opportunity* to obtain an
6 advantage over competitors who do not know or use it.” RESTATEMENT OF TORTS § 757, cmt. b
7 (1939) (emphasis added). Thus, for example, in *In re Electronic Arts*, the Ninth Circuit stated
8 that “pricing terms, royalty rates, and guaranteed minimum payment terms ... plainly fall[] within
9 the definition of ‘trade secrets,’” and held that a district court had abused its discretion in denying
10 sealing of such information. 298 Fed. App'x at 569. Indeed, such data is both a paradigmatic
11 trade secret and the precise sort of information that could be used to harm a business’s competitive
12 standing— both of which suffice to overcome the public interest in disclosure and thus to justify
13 sealing.

14 As Samsung established in its July 30, 2012 Renewed Administrative Motion to File
15 Documents Under Seal (Dkt. No. 1490), the documents at issue here, which include per-product
16 revenue, pricing, cost, and financial information, fall squarely in the realm of trade secrets. The
17 documents include product-specific sales, costs of goods sold, expenses, and profits data for all
18 accused products for each month between 2007 and 2012 and details of Samsung’s licensing
19 negotiations. *See* Declaration of GiHo Ro dated July 30, 2012 (Dkt. No. 1490) ¶¶ 12-13, 21-22.
20 The exhibits are extremely valuable to Samsung, because the data guide the company’s pricing,
21 distribution, financial planning, and other business decisions. Conversely, their release would be
22 a windfall to Samsung’s vendors, buyers, and competitors, could use insight about Samsung’s
23 financial data to its substantial detriment. *Id.* ¶¶ 6-8. The documents contain trade secrets, a fact
24 that alone is sufficient to establish “compelling reasons”—and, *a fortiori*, “good cause”—for
25 sealing the selected portions. *Kamakana*, 447 F.3d at 1179; *In re Elec. Arts*, 298 Fed. App'x at
26 569-70.

27 Even if the technical definition of trade secrets are not met, the documents should
28 nonetheless be sealed as they clearly meet Rule 26’s definition of confidential “commercial

1 information.” Competitors, could use Samsung’s financial data to determine Samsung’s pricing
2 “floor” and price its products at a level Samsung would not be able to profitably match, while
3 component suppliers and customers would be able to use the information during negotiations to
4 obtain more favorable pricing terms. *See id.* ¶¶ 6-8; Declaration of GiHo Ro dated July 27, 2012
5 (Dkt. No. 1409) ¶ 6; Declaration of Hankil Kang dated February 15, 2013 (Dkt. No. 2231) ¶¶ 5-
6 11.

7 It is for this reason that courts in the Ninth Circuit consistently seal confidential financial
8 information even under the “compelling reasons” standard. *See, e.g., Bean v. John Wiley & Sons,*
9 *Inc.*, No. CV 11-08028-PCT-FJM, 2012 WL 1078662, *5-6 (D. Ariz. Mar. 30, 2012); *Bauer Bros.*
10 *LLC v. Nike, Inc.*, No. 09cv500-WQH-BGS, 2012 WL 1899838, *3-4 (S.D. Cal. May 24, 2012);
11 *TriQuint Semiconductor, Inc. v. Avago Techs., Ltd.*, No. CV 09-1531-PHX-JAT, 2011 WL
12 6182346, *3-7 (D. Ariz. Dec. 13, 2011). The Court should find the confidential financial
13 information at issue here sealable for the same reasons.

14 **III. THE COURT SHOULD GRANT SAMSUNG’S REQUEST TO STAY**

15 Should the Court find that the confidential financial information at issue here may not be
16 sealed, the Court should deny Samsung’s requests without prejudice to it re-filing a renewed
17 motion to seal should the Federal Circuit disagree with this Court’s reasoning in the pending
18 appeal from the Court’s August 9, 2012 and July 17, 2012 Orders. Both Apple and Samsung
19 have sought “review of this Court’s decision on the sealability of precisely this type of
20 information” (Dkt. No. 2210 at 4) and the documents at issue here are either identical to those at
21 issue on appeal or subject to the same analysis. “Thus, the outcome of the appeal of the August 9
22 Order bears on the present” motion.” Dkt. No. 2168 at 8. In addition, Samsung requests that the
23 Court stay disclosure of the documents pending the Federal Circuit’s resolution of the appeal.

24 **CONCLUSION**

25 For the foregoing reasons, Samsung respectfully requests that the Court grant this renewed
26 administrative motion to file under seal.

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Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Victoria F. Maroulis
Charles K. Verhoeven
Kevin P.B. Johnson
Victoria F. Maroulis
Michael T. Zeller
Attorneys for SAMSUNG ELECTRONICS CO.,
LTD., SAMSUNG ELECTRONICS AMERICA,
INC. and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC