

1 HAROLD J. MCELHINNY (CA SBN 66781)
hmcclhinny@mofo.com
2 MICHAEL A. JACOBS (CA SBN 111664)
mjacobs@mofo.com
3 RACHEL KREVANS (CA SBN 116421)
rkrevans@mofo.com
4 JENNIFER LEE TAYLOR (CA SBN 161368)
jtaylor@mofo.com
5 MORRISON & FOERSTER LLP
425 Market Street
6 San Francisco, California 94105-2482
Telephone: (415) 268-7000
7 Facsimile: (415) 268-7522

WILLIAM F. LEE
william.lee@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

MARK D. SELWYN (SBN 244180)
mark.selwyn@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
950 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 858-6000
Facsimile: (650) 858-6100

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9 Attorneys for Plaintiff and
Counterclaim-Defendant APPLE INC.

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 APPLE INC., a California corporation,

15 Plaintiff,

16 v.

17 SAMSUNG ELECTRONICS CO., LTD., a
18 Korean corporation; SAMSUNG
ELECTRONICS AMERICA, INC., a New
19 York corporation; and SAMSUNG
TELECOMMUNICATIONS AMERICA,
20 LLC, a Delaware limited liability company,

21 Defendants.

Case No. 11-cv-01846-LHK

**APPLE'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF SAMSUNG'S
RENEWED MOTION TO SEAL**

1 In accordance with Civil Local Rules 7-11 and 79-5, and General Order No. 62, Apple
2 submits this memorandum in support of Samsung's renewed motion to seal documents related to
3 Samsung's Oppositions to Apple's Motion to Exclude Testimony of Samsung's Experts (Dkt.
4 No. 999) and Apple's Motion to Strike (Dkt. No. 1000).

5 **I. THE COURT SHOULD SEAL HARDWARE SCHEMATIC INFORMATION,
6 CAPACITY INFORMATION, FINANCIAL INFORMATION, AND THIRD
7 PARTY RESEARCH DATA**

8 The Court should grant Samsung's renewed motion to seal Apple-confidential material as
9 outlined in greater detail below and the Declaration of Cyndi Wheeler in Support of Samsung's
10 Renewed Motion to File Under Seal ("Wheeler Decl.") filed herewith. The need to protect trade
11 secrets contained in Apple documents filed in connection with Samsung's motions is a
12 "compelling reason" to seal material, which is sufficient to outweigh the public's interest in
13 disclosure. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). The
14 type of information that Apple seeks to seal qualifies as trade secret. *See, e.g., SI Handling Sys.,
15 Inc. v. Heisley*, 753 F.2d 1244, 1260 (3d Cir. 1985) (concluding that data relating to profit margin
16 constituted trade secrets).

17 **A. The Court should seal Apple's hardware schematic information**

18 Exhibit J to the Ward Declaration in Support of Samsung's Opposition to Apple's Motion
19 to Strike (Dkt. No. 1000) consists of a transcript from ITC investigation No. 337-TA-750
20 involving Apple and Motorola that includes detailed discussions of touchscreen hardware and
21 schematics. The Court has previously approved sealing detailed schematics information. (ECF
22 No. 1649 at 8.) Not only is this information trade secret that would give competitors highly
23 sensitive hardware details as discussed in the Wheeler Declaration, it has no relevance to the
24 claims in the case, as Apple voluntarily dismissed its claims related to the '607 patent before trial
25 began. There is therefore no countervailing need for the public to see this document in its
26 unredacted form, and it will not benefit the public's understanding of this case. The Court should
27 approve the redactions proposed in Wheeler Exhibit 1.
28

1 **B. The Court should seal Apple’s capacity information**

2 Exhibit EE to the Ward Declaration in Support of Samsung’s Opposition to Apple’s
3 Motion to Strike (Dkt. No. 1000) and Exhibit O to the Martin Declaration in Support of
4 Samsung’s Opposition to Apple’s Motion to Exclude Testimony of Samsung’s Experts (Dkt.
5 No. 999) consist of expert reports from Samsung’s expert Michael J. Wagner and contain Apple
6 capacity information. Exhibit FF to the Ward Declaration in Support of Samsung’s Opposition to
7 Apple’s Motion to Strike (Dkt. No. 1000) consists of a supplemental expert report from Apple’s
8 expert Terry Musika. The Court has previously approved sealing the exact capacity information
9 at issue in these exhibits. As set out in Wheeler Exhibits 2 and 3, Apple requests redactions in
10 Paragraphs 178, 179, 180, 188, 193, and related figures. The Court approved redactions of these
11 paragraphs in its August 9 Order. (ECF No. 1649 at 14) Similarly, Wheeler Exhibit 4 sets out
12 capacity redactions in Exhibits 17.2-S, 20-S, 26, and 27. The Court approved these redactions of
13 capacity data in its August 9 Order. (*Id.* at 13.)

14 **C. The Court should seal third party confidential research data**

15 The Supplemental Musika Expert Report discussed above also contains several charts
16 with extensive IDC data. (Wheeler Decl. ¶¶ 10-11.) The Court has previously granted motions to
17 seal consumer research reports prepared by third parties such as IDC (*E.g.*, ECF. No. 2047 at 4-5).
18 The Court found that release of such information “could harm IDC in so far as it might reduce
19 IDC’s ability to sell its reports to other customers, and the public’s interest in this information
20 about the smartphone market generally is not especially great, and could be satisfied by the
21 information disclosed at trial.” (ECF No. 2047 at 4-5; *see also* ECF No. 1649 at 10.) For the
22 same reasons discussed in Apple’s prior motions to seal, Apple respectfully requests that the
23 Court seal this material.

24 **D. The Court should seal Apple’s highly confidential financial information**

25 The Wagner expert reports and Supplemental Musika Expert Report discussed above also
26 contain Apple financial information. Apple has previously moved to seal, supported by detailed
27 declarations, the same financial information. The Court previously denied Apple’s motions but
28

1 has stayed enforcement of its order pending Apple's appeal to the Federal Circuit. (ECF.
2 Nos. 1754, 2047.).

3 Apple takes extensive steps to protect the secrecy of its critical financial information.
4 Even within Apple, very few people have access to this information. Access is on a "need to
5 know" basis and must be approved in advance by one of Apple's Vice Presidents of Finance.
6 (ECF No. 1502 ¶ 3.) The list of approved individuals is reviewed quarterly and revised to ensure
7 that employees who no longer require access do not receive that information. (*Id.*) On the very
8 rare occasions Apple must disclose its nonpublic financial information to those outside Apple, it
9 marks such information "confidential" and distributes it only subject to highly restrictive
10 nondisclosure agreements or protective orders. (*Id.*)

11 Apple goes to such lengths to protect its financial information because the information is
12 competitively sensitive. Apple derives enormous value from the fact that its financial details are
13 not shared with Apple's competitors and suppliers. (ECF. No. 1502 ¶¶ 4-8.) Apple's competitors
14 could use profits and margins data to undercut Apple's prices by determining the products for
15 which Apple has substantial profits, low costs, and wide margins and thus would be most
16 susceptible to a price cut. (*Id.* ¶ 8.) Competitors' products—particularly if released with pricing
17 designed to take advantage of unfair knowledge of Apple's bottom line—will substantially affect
18 demand for Apple's products. Competitors could use the information to develop products that
19 they can strategically price to undercut Apple. The facts of this case substantiate this risk.
20 Indeed, Samsung may be in a position to undercut Apple's prices for smartphones and tablets,
21 having already economized on development costs by free-riding off Apple's innovation. Apple's
22 suppliers could use quarterly profits, costs, and margins data to determine when Apple has the
23 highest margins and hike their prices accordingly. (*Id.*)

24 Product-line specific information, i.e. financial details with information as to specific
25 versions of a given product, is also critically sensitive and valuable. (ECF No. 1502 ¶ 7.)
26 Product line sales and revenue information reveal to competitors what Apple's most and least
27 successful products are, and therefore provide unfair intelligence into which markets are ripe for
28 competition and which markets may be more difficult to approach. (*Id.*) Apple respectfully

1 requests that the financial information contained in Samsung’s filings be sealed, as set out in in
2 the Wheeler Declaration ¶¶ 3-9.

3 **II. IF SEALING IS DENIED, THE COURT SHOULD STAY THE EFFECT OF ITS**
4 **ORDER PENDING APPEAL**

5 Apple respectfully requests that if the Court denies sealing of any of the materials that are
6 the subject of this motion, the Court continue its practice of staying effect of its order pending
7 appeal. (Dkt. No. 2047 at 7.) As the Court has previously held, once information is publicly filed,
8 “what once may have been trade secret no longer will be. Thus, the parties may be irreparably
9 injured absent a stay. In contrast, the public interest, which favors disclosure of relevant
10 information in order to understand the proceedings, is not unduly harmed by a short stay.” (*Id.*)

11 Dated: April 2, 2013

MORRISON & FOERSTER LLP

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13 By: /s/ Jason R. Bartlett
14 JASON R. BARTLETT

15 Attorneys for Plaintiff
16 APPLE INC.
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