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

11 APPLE INC.,

12 Plaintiff,

13 v.

14 SAMSUNG ELECTRONICS CO., LTD., a  
Korean corporation; SAMSUNG  
15 ELECTRONICS AMERICA, INC., a New  
York corporation; and SAMSUNG  
16 TELECOMMUNICATIONS AMERICA,  
LLC, a Delaware limited liability company,

17 Defendants.  
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Case No. 11-cv-01846-LHK

**NON-PARTY INTEL'S MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT OF SAMSUNG'S RENEWED  
MOTION TO SEAL**

19 Pursuant to Civil L.R. 7-11 and 79-5(c), and the Court's Order of March 17, 2013  
20 (Dkt. # 2278), non-party Intel Corporation ("Intel") submits this memorandum of points and  
21 authorities in support of Samsung's "Renewed Motion to File Documents Under Seal"  
22 (Dkt. # 2292).

23 On April 1, 2013, Samsung renewed its motion to file certain documents, or portions  
24 thereof, under seal. (Dkt. # 2292). One of the documents addressed in that motion and proposed  
25 order, Exhibit BB to the Ward Declaration in Support of Samsung's Opposition to Apple's  
26 Motion to Strike ("Ward Declaration") (Dkt. No. 1014), contains Intel highly sensitive, technical  
27 product information. More specifically, paragraphs 87-89, 97-98, 128-29, 135, 141, 147, and 169  
28

1 of Exhibit BB to the Ward Declaration contain confidential technical product information  
2 regarding the design of Intel's baseband chips.

3 Intel, therefore, submits this memorandum in support of Samsung's motion to seal those  
4 portions of Exhibit BB to the Ward Declaration to protect Intel's highly-sensitive technical design  
5 information.

## 6 ARGUMENT

7 Evidence relevant to a dispositive matter may be sealed for "compelling reasons."  
8 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). Sealing is  
9 warranted where a party has taken steps to maintain the secrecy of the information and would be  
10 harmed if it were disclosed. *Network Appliance, Inc. v. Sun Microsystems, Inc.*, Case No.  
11 C-07-06053 EDL, 2010 WL 841274, at \*2 (N.D. Cal. Mar. 10, 2010) (finding compelling reason  
12 to seal "in light of the confidential nature of the information and the competitive harm to third  
13 parties if the confidential information were disclosed"); *Upek, Inc. v. Authentec, Inc.*, Case No.  
14 C 10-00424 JF, 2010 WL 1980189, at \*4 (N.D. Cal. May 17, 2010) (noting effort to maintain  
15 confidentiality in finding compelling reason to seal).

16 Technical design aspects of Intel's source code are discussed in paragraphs 98, 141, and  
17 169 of Exhibit BB to the Ward Declaration. As described in the accompanying declaration of  
18 Josef Hausner, attached as Exhibit A to this motion ("Hausner Decl."), Intel maintains the secrecy  
19 of the source code and technical documents and would be harmed by their public disclosure.  
20 Hausner Decl. at ¶¶ 3-6. The source code represents a significant investment and contains  
21 numerous trade secrets that provide a competitive advantage to Intel. Hausner Decl. at ¶¶ 4-5.  
22 Disclosure of the source code would seriously harm Intel by enabling potential competitors to  
23 shortcut their development efforts by copying Intel's source code to create firmware. *Id.* The  
24 harm resulting from disclosure of technical details of a party's product is frequently found to  
25 provide a "compelling reason" to seal. *Kamakana*, 447 F.3d 1172, 1179 (compelling reason may  
26 be found in avoiding release of trade secrets); *Network Appliance*, 2010 WL 841274, at \*2; *Dish*  
27 *Network, LLC v. Sonicview USA, Inc.*, Case No. 09CV1553-L(NLS), 2009 WL 2579052, at \*1  
28 (S.D.Cal. Aug. 20, 2009); *Upek*, 2010 WL 1980189, at \*4.

1 Likewise, technical design information from Intel’s “X-GOLD 61x Product Specification”  
2 is discussed in paragraphs 87-88, 97, 98, 128, and 169 of Exhibit BB to the Ward Declaration.  
3 The X-GOLD 61x Product Specification breaks down the system design of the X-GOLD 61x  
4 modem into its constituent modules and specifies the interfaces and algorithms used by each  
5 module. Hausner Decl. at ¶¶ 7-9. Although The X-GOLD 61x Product Specification is not  
6 source code, it is similarly valuable because it provides a complete specification for the system  
7 design of the X-GOLD 61x modem. *Id.*

8 Paragraphs 89, 129, 135, 141, and 147 of Exhibit BB to the Ward Declaration similarly  
9 disclose confidential technical design information regarding Intel’s products. Each of those  
10 paragraphs discuss or quote the confidential deposition testimony of Marcus Paltian, an engineer  
11 for Intel Mobile Communications (“IMC”), in which he testifies about portions of Intel’s  
12 confidential product designs. Though portions of the Paltian deposition transcript were played in  
13 open court at trial, none of the portions referenced in these paragraphs were played at trial.

14 Disclosure of this information from Intel’s source code, the X-GOLD 61x Product  
15 Specification, or the Paltian deposition testimony would seriously harm Intel on two counts.  
16 First, advantageous features of Intel’s system-level design for its X-GOLD 61x modem would  
17 become publicly documented and could be copied by Intel’s competitors. Hausner Decl. at  
18 ¶¶ 4-5, 9. Second, Intel would be put at risk of having to compete with products from  
19 manufacturers that did not have to bear the expense or burden of doing their own independent  
20 system development efforts. These risks provide a “compelling reason” to seal the Product  
21 Specification. *See Dish Network*, 2009 WL 2579052, at \*1 (possibility that technical material  
22 could serve as “blueprint” for competitors provides compelling reason to seal); *Network*  
23 *Appliance*, 2010 WL 841274 at \*2.

24 Sealing these documents will not deprive the public of the opportunity to meaningfully  
25 review the proceedings. The public will be left with sufficient basis in the open record to  
26 understand the merits of the motion for which this exhibit was submitted. *See Dish Network*,  
27 2009 WL 2579052, at \*1 (finding compelling reason to seal where documents that would remain  
28 publicly available “describe in less detail the infringing nature of the devices and software but

1 provide sufficient information to enable public understanding of the judicial process without the  
2 need to make public the detailed **technical** explanations contained in the report”).

3 **CONCLUSION**

4 The relief requested in this motion is narrowly tailored. Intel only seeks to seal limited  
5 portions of Exhibit BB to the Ward Declaration to prevent the disclosure of its proprietary and  
6 highly valuable system designs and source code information.

7 Accordingly, Intel respectfully requests that the Court grant Samsung’s Renewed  
8 Administrative Motion to File Documents Under Seal in regard to paragraphs 87-89, 97-98,  
9 128-29, 135, 141, 147, and 169 of Exhibit BB to the Ward Declaration.

10 Dated: April 8, 2013

Respectfully submitted,

11  
12 /s/ Christopher L. Kelley

Christopher L. Kelley

13 Counsel for Non-Party Intel Corporation  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 8, 2013.

*/s/ Christopher L. Kelley*  
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Christopher L. Kelley