IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Apple Inc., Plaintiff-Appellant, v. Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC, Defendants-Cross Appellants.	Nos. 2012-1600, -1606

RESPONSE OF DEFENDANTS-CROSS APPELLANTS TO MOTION OF *AMICI CURIAE* FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Amici First Amendment Coalition ("FAC") and Reporters Committee for Freedom of the Press et al. have moved to participate in an oral argument that the Court has not ordered and that the parties have not requested. They offer no reason to think that such argument is necessary, or that their participation is warranted. And the requested relief is inconsistent with the Court's prior order denying FAC's motion to intervene in this appeal. The motion should be denied.

ARGUMENT

1. As an initial matter, *amici* simply assume that there will be oral argument on this appeal and thus that their involvement in that argument is necessary to correct a perceived imbalance were the Court to hear only from the parties. But oral

argument is unnecessary: Neither party to the appeal has requested it, and indeed Samsung has explicitly advised the Court that the case can and should be decided on the papers (*see* Samsung Br. 30). The appeal and cross-appeal solely address whether the district court erred in denying motions to seal certain pre-trial materials, and they can be resolved by application of settled Ninth Circuit law based on facts and legal arguments that are fully presented in the briefs and the record. *See* FED. R. APP. P. 34(a)(2)(B)-(C). *Amici* offer no argument to the contrary, and they identify no facts or arguments requiring further explanation or clarification.

2. Nor is there a basis in Rule 29 for permitting *amici* to participate in any oral argument. When Rule 29(g) was amended in 1998, the Advisory Committee noted that its deletion of the prior rule's explicit "extraordinary reasons" standard was intended to accomodate the practice of "permit[ting] an amicus to argue when a party is willing to share its argument time with the amicus." FED. R. APP. P. 29 adv. comm. n. (1998). But neither party wishes to split time with *amici*, and the Committee specifically explained that its amendment did not alter the preexisting rule that in the absence of such an agreement, "an amicus will be permitted to argue" only in "extraordinary circumstances." *Id. Amici* fail to identify the requisite "extraordinary circumstances" here. Any need for a "true adversarial process" (Mot. 3) has been fulfilled by *amici*'s participation in the briefing, where they fully presented their arguments.

3. Finally, *amici*'s request is inconsistent with the Court's prior order holding that FAC does not meet the "exacting standard" for intervention on appeal. ECF No. 39-2, at 2 (Sept. 18, 2012). Indeed, the motion is an attempt at an end-run around that order: If *amici* are allowed to join in oral argument, they would enjoy essentially the same level of participation as a full-fledged party to the case, notwithstanding the Court's determination that they are not entitled to such status. *Amici* offer no justification for revisiting the Court's prior order, and their attempt to circumvent it should be denied.

CONCLUSION

The Court should deny *amici*'s motion for leave to participate in oral argument.

Dated: December 17, 2012

Respectfully submitted,

By: /s/ William B. Adams

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CERTIFICATE OF INTEREST

Counsel for Defendants-Cross Appellants certifies the following:

1. The full name of every party or amicus represented by me is:

Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: N/A

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

Samsung Electronics America, Inc. ("SEA") is a wholly-owned subsidiary of Samsung Electronics Co., Ltd. ("SEC"), a publicly held corporation organized under the laws of the Republic of Korea. SEC is not owned by any parent corporation and no other publicly held corporation owns 10% or more of its stock. No other publicly held corporation owns 10% or more of SEA's stock. Samsung Telecommunications America, LLC ("STA") is a wholly-owned subsidiary of SEA. No other publicly held corporation owns 10% or more of STA's stock.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or are expected to appear in this court are:

Quinn Emanuel Urquhart & Sullivan, LLP: John B. Quinn; Charles K. Verhoeven; Kathleen M. Sullivan; Kevin P.B. Johnson; Victoria F. Maroulis; Michael T. Zeller; Todd M. Briggs; Margret M. Caruso; Rachel Herrick Kassabian; Kevin A. Smith; William B. Adams; Albert P. Bedecarre; Kara M. Borden; Jon C. Cederberg; Melissa N. Chan; Edward J. DeFranco; Susan R. Estrich; Ryan S. Goldstein; Diane Hutnyan; Brian E. Mack; Joseph Milowic; William C. Price; Christopher E. Stretch; Mark Tung; Curran M. Walker; Alan L. Whitehurst; Robert Wilson; Michael T. Zeller; B. Dylan Proctor; John M. Pierce; Scott L. Watson; Robert J. Becher; Anthony P. Alden; Carey R. Ramos

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Dated: December 17, 2012

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PROOF OF SERVICE

The undersigned hereby certifies that on December 17, 2012, I electronically filed the foregoing RESPONSE OF DEFENDANTS-CROSS APPELLANTS TO MOTION OF *AMICI CURIAE* FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ William B. Adams
William B. Adams