

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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APPLE INC.,

*Plaintiff-Appellant,*

v.

SAMSUNG ELECTRONICS CO., LTD.,  
SAMSUNG ELECTRONICS AMERICA, INC., and  
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,

*Defendants-Cross Appellants.*

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Appeals from the United States District Court for the  
Northern District of California in case no. 11-CV-1846, Judge Lucy H. Koh.

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**RESPONSE OF PLAINTIFF-APPELLANT APPLE INC. TO MOTION OF  
AMICI CURIAE FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT**

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January 2, 2013

*Counsel for Plaintiff-Appellant Apple Inc.*

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## CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4, counsel of record for Plaintiff-Appellant Apple Inc. certifies as follows:

1. The full name of every party represented by us is:  
Apple Inc.
2. The names of the real parties in interest represented by us are:  
Not applicable
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the parties represented by us are:  
None.
4. The names of all law firms and the partners or associates that appeared for the parties represented by us in the trial court, or are expected to appear in this Court, are:

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Respectfully submitted,

*/s/ William F. Lee*

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## **INTRODUCTION**

Amici's motion to participate in oral argument seeks to allow amici to be heard in these appeals to the same extent as the parties. That request raises the same issues as amicus First Amendment Coalition's ("FAC") prior motion to intervene, and as with FAC's prior motion, such relief may be granted only under "extraordinary circumstances." Fed. R. App. P. 29(g) advisory committee note (1998) (stating that absent the parties' consent to share time with amici, amici should be permitted to argue only under "extraordinary circumstances"). This Court previously found that FAC had not met that "exacting standard" in evaluating its motion to intervene. Dkt. No. 39-2 at 2. For the same reasons, amici have also failed to demonstrate that extraordinary circumstances warrant their participation in oral argument.

## **ARGUMENT**

Amici contend that they should participate in oral argument because otherwise the Court "will not have the benefit of a true adversarial process." Joint Motion of Amici Curiae for Leave to Participate in Oral Argument at 3 (Dkt. No. 74). But both sides of the issue presented are already set forth in the briefing before this Court, including two briefs from amici. The district court's order under review also sets forth essentially the same arguments offered by amici against the

parties' positions. Amici therefore need not participate further through oral argument to maintain the adversarial process.

Allowing amici to participate in oral argument would also undermine the Court's earlier denial of FAC's motion to intervene. Amici have already filed two briefs in this appeal. If amici are allowed to participate in oral argument with equal time as the parties, they would—for all practical purposes—be participating as though they had timely intervened. Amici should not be allowed to circumvent the requirement of timely intervention by elevating their participation as amici to share in the same opportunity for oral argument that they would have had as intervenors.

Although Samsung contends that oral argument is not necessary to resolve this appeal (Response of Defendants-Cross Appellants to Motion of *Amici Curiae* for Leave to Participate in Oral Argument at 1-2 (Dkt. No. 76)), Apple believes that oral argument from Apple and Samsung would assist the Court's understanding of the material that the parties seek to seal and the substantial competitive harms that would result from its disclosure. But the same is not true for amici's participation in oral argument. Indeed, amici concede that they have never seen the documents that the parties seek to seal (FAC Br. 19), and their participation in oral argument therefore would not facilitate the Court's understanding of the actual dispute underlying these appeals. At most, amici could

use oral argument to rehash the same arguments set forth in their briefs about the public's generalized interest in access to court documents. Because amici's participation in oral argument would not assist the Court's understanding beyond what is already contained in their two briefs, amici fall well short of demonstrating the extraordinary circumstances that they need to participate in oral argument.

### CONCLUSION

This Court should deny amici's request to participate in oral argument.

Respectfully submitted,

*/s/ William F. Lee*

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January 2, 2013

*Counsel for Plaintiff-Appellant Apple Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document with the Clerk of the United States Court of Appeals for the Federal Circuit via the CM/ECF system and served a copy on counsel of record, this 2d day of January, 2013, by the CM/ECF system and by electronic mail to the parties on service list below.

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